

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC**

In the Matter of:

Request for Review)	
of the Decision of the)	
Universal Service Administrator by)	
)	
Dillon County School District 4)	CC Docket No: 02-6
(Formerly Dillon County School District 2))	
BEN Number: 127197)	
)	
Schools and Libraries Universal Service)	SLD File No. 741606, 737144,
Support Mechanism)	685216 and 685379
)	
Wireline Competition Bureau)	

REQUEST FOR REVIEW

INTRODUCTION

Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Universal Service Administrative Company may seek review from the Commission.¹ Dillon County School District 4 (School District) and Computer Software Innovations, Inc. (CSI) hereby appeal the current action taken by USAC in the above-captioned case.

BACKGROUND

On November 21, 2012, CSI and Dillon County School District 4 filed an appeal with USAC regarding a Funding Year 2010 funding request denial. On December 8, 2012, CSI and the School District filed an appeal with USAC regarding a Funding Year 2009 Commitment Adjustment Letter. The Funding Year 2010 funding denial and the Funding Year 2009 COMAD were based on the same basic maintenance contract between the service provider and school

¹ 47 C.F.R. § 54.719(c).

district and both involve the same issue of whether the requests at issue were outside the scope of the originating Form 470. On July 1, 2013, USAC denied both appeals without addressing the facts and arguments raised by the School District and CSI. The original appeals and the denial letters are attached and respectfully submitted for review as part of this appeal:

Exhibit A - Funding Year 2009 appeal filed at USAC

Exhibit B - Funding Year 2009 USAC appeal denial letter

Exhibit C – Funding Year 2010 appeal filed at USAC

Exhibit D - Funding Year 2010 USAC appeal denial letter

SUMMARY

CSI and the School District together respectfully request that the FCC review the USAC appeal decision in this matter, reverse the USAC decisions, and restore all of the School District's funding.

Respectfully submitted on behalf of
Computer Software Innovations, Inc. and Dillon County School District Four,

/s/ Catherine Cruzan

Catherine Cruzan
President
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ccruzan@fundsforlearning.com
404-431-4140

August 5, 2013

Exhibit A

Letter of Appeal (COMAD) -- Computer Software Innovations, Inc. and Dillon County School District 4

December 8, 2012

via e-mail: appeals@sl.universalservice.org

Letter of Appeal
Schools and Libraries Division - Correspondence Unit
30 Lanidex Plaza West
PO Box 685
Parsippany, NJ 07054-0685

LETTER OF APPEAL
of
USAC COMMITMENT ADJUSTMENT DECISIONS
Date of COMADs: October 10, 2012
and
SUPPLEMENT TO LETTER OF APPEAL
Submitted to USAC on November 21, 2012
(copy attached)

Appellants: **Computer Software Innovations, Inc.**
900 Main Street (Suite T)
Easley, SC 29640

SPIN: 143017811

and

Dillon County School District 4
(formerly Dillon County School District 2)
801 South Ninth Ave.
Dillon, SC 29536

Entity #: 127197

FCC Registration #: 0020674073

Letter of Appeal Contact: Catherine Cruzan
President
Funds For Learning, LLC
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Appellants' Contact: Chris Davis
Federal Programs Compliance Manager
Computer Software Innovations, Inc.
cdavis@csioutfitters.com
864-770-2762

Appellants' Authorization: Funds For Learning, LLC (FFL) is authorized to prepare and file this appeal electronically on behalf of both appellants and to discuss any matter related to it. If USAC has questions or requires additional information, please contact Catherine Cruzan, the Letter of Appeal contact designated above.

Funding Year: 2009
Form 471 Application Number: 685216 and 685379
FRNs in Issue: see table below

FRN	Form 471	Svc	Year	FCDL Date	Discount %	Rejected Amount
1873943	685216	Basic Maintenance	2009	10/10/12	90%	\$14,772.46
1874187	685216	Basic Maintenance	2009	10/10/12	90%	\$15,979.25
1874979	685379	Basic Maintenance	2009	10/10/12	90%	\$8,519.36
1874921	685379	Basic Maintenance	2009	10/10/12	90%	\$11,158.13
1874950	685379	Basic Maintenance	2009	10/10/12	90%	\$6,910.92
1875008	685379	Basic Maintenance	2009	10/10/12	90%	\$13,933.73
1875051	685379	Basic Maintenance	2009	10/10/12	90%	\$7,532.03
1875078	685379	Basic Maintenance	2009	10/10/12	90%	\$6,966.32
						\$85,772.20

SUMMARY

Dillon County School District Two (now known as Dillon County School District Four), (“School District”) has been submitting requests for E-rate discounts on its basic maintenance contracts with Computer Software Innovations, Inc. (“CSI”) every funding year since FY 2007, which is when its long-term contract with CSI began.

Related Case: On September 24, 2012, USAC decided incorrectly not to fund the School District’s FY 2010 FRNs for basic maintenance on the grounds that the School District’s FY 2007 Item 21 Descriptions of Service for two different multiyear contracts did not match up exactly with their respective, FY 2010 Item 21 counterparts. One of the FY 2010 Item 21s included some additional equipment and the other one included a slightly higher number of estimated maintenance hours and slightly higher hourly rates. Those minor differences, USAC found -- without discussing why there were differences or what if any real impact they might have had -- were enough to turn the parties’ otherwise E-rate eligible, long term contracts into ineligible ones. On November 21, 2012, the School District and CSI appealed USAC’s decision. That Letter of Appeal is attached as Exhibit 1.

This Case: In its two COMADs dated October 10, 2012, USAC decided to rescind the School District’s FY 2009 FRNs for basic maintenance for exactly the same reason. The relevant facts, issues, and controlling precedent are the same in both cases. USAC’s two decisions are attached as Exhibit 2.

For a full discussion of the facts and all of the reasons why both cases were wrongly decided, we direct USAC’s attention to the attached Letter of Appeal (Exhibit 1), and to the supplemental information and documentation provided in this Letter of Appeal. In both cases, USAC’s decision focused on slight differences in the Item 21 Descriptions of Services that the School District had submitted in two different funding years for the same two, multiyear contracts.

Contrary to USAC, CSI and the School District contend that the differences between the respective Item 21s for the two contracts for the two funding years – i.e., the addition of wireless

networking equipment to the Item 21 for one of the contracts and slightly higher hourly rates and estimated hours for the other – could not possibly amount to a competitive bidding violation. According to USAC, when an applicant files an Item 21 for a multiyear maintenance contract, and that Item 21 includes higher prices or items that differ from what appeared in the first year's Item 21, it indicates conclusively that the parties' contract has changed. That, USAC says, automatically constitutes a competitive bidding violation -- regardless of the nature of the change or the circumstances. We disagree.

Precedent dating back more than 100 years stands for the very clear proposition that if the solicitation for a public contract either includes or contemplates the contract changes in issue or if the changes are anything less than “material” or “substantial,” the changes will NOT invalidate the contract. Here, the School District's RFPs for comprehensive, long-term network maintenance contracts included in its terms and contemplated the very changes that USAC relied upon to invalidate the parties' multiyear maintenance agreements. But even if they did not, the changes in issue were neither “material” nor “substantial.”

Therefore, CSI and the School District together respectfully request that USAC review this matter, reverse its decisions, and restore all of the School District's funding.

SUPPLEMENTAL INFORMATION AND DOCUMENTATION

Eligible Hardware Maintenance Contract. At the same time as it was soliciting long-term maintenance contracts, the School District released an RFP and posted a Form 470 for a wireless networking project. Thus it was common knowledge in the vendor community that the School District was going to be purchasing additional wireless equipment over the course of the parties' multiyear maintenance contract, that some if not all of that equipment would eventually require maintenance, and that the School District's hardware maintenance agreement was going to cover it when it did. Consequently, the addition of some wireless equipment to that contract did not come as a surprise to anyone. In any event, adding some wireless equipment to the parties' comprehensive, long-term maintenance agreement did not alter it in any “material” or “substantial” respect.

What is especially frustrating is that Paula Yohe, the School District's Director of Technology, called USAC to discuss precisely that issue before filing the School District's FY 2009 E-rate application. Adding the wireless equipment was not going to be a problem from a local contracting perspective, but she wanted to make sure that USAC was "okay" with it too.

So Ms. Yohe called the Client Service Bureau to find out. The CSB representative told her in no uncertain terms that the change did NOT amount to a "significant" change that would require the School District to re-bid its contract. There was no hedging or equivocating. There was no suggestion that a CSB representative's response to a question could not or should not be relied upon.

Based on the affirmative response received back from USAC, the equipment was added to the maintenance contract and the FY 2009 application filed. During the Selective Review Process, Ms. Yohe explained all of this to the Program Compliance representative. *See Exhibit 4.* Now, USAC wants to strip the School District of all of its maintenance funding because it followed USAC's advice. That USAC's own staff cannot even agree on what constitutes a "significant" contract change makes it obvious that USAC does not possess the authority to be deciding these kinds of difficult legal questions. Where these kinds of very local contracting issues are concerned, USAC should be deferring to applicants' interpretations of their own rules, unless there is absolutely no question that they are wrong. If USAC continues down the road it is on, it will become, in effect, a contract review board for all fifty states and every territory. Therefore, we urge USAC to consult with the FCC before deciding this case.

To make matters worse, Ms. Yohe even offered during Selective Review Process to remove the cost of maintaining the wireless equipment (and the cost associated with the rate increases) from the applicable funding requests, even though the School District was entitled to this funding. This act of good faith fell on deaf ears.

Instead of reducing the School District's funding, USAC wiped it out completely. As we have said before, that is a punishment, not a remedy. If indeed program rules say that the School District is not entitled, in these circumstances, to any funding associated with the cost of maintaining its wireless equipment and/or the hourly rate increases, then, as we have also said

before, the correct and equitable remedy is simply not to fund the incremental increase in costs associated with the wireless equipment and the hourly rate increases.

Eligible Software Maintenance Contract. USAC says that the School District should have spent the time and money to rebid its entire multiyear software maintenance contract, rather than do the following two things:

(1) include in its Item 21 Forms for FY2009 and FY 2010 a small increase in estimated maintenance hours, even though experience proved that this small increase would likely be necessary; and

(2) agree to accept a small hourly rate increase in line with the increase in the cost of living, a rate increase that the parties' contract and local procurement law specifically allowed.

As discussed in more detail below, USAC inexplicably found that the addition of some estimated hours to the FY 2009 and FY 2010 Item 21s was a competitive bidding violation *even though estimating the demand for maintenance did not involve any contract change*. In fact, the new estimate was nothing more than recognition that the covered software was likely going to require more time to maintain than it had before. Without that information, the School District would not have known how much funding to request for software maintenance for the upcoming year. More important still, increasing the number of estimated maintenance hours in one year's Item 21 to the next could NOT possibly affect the cost of the service, because the School District only paid for maintenance hours actually provided. Therefore, an increased estimate of hours could not possibly have violated the parties' contract or somehow constituted a competitive bidding violation.

Another important point, also discussed in more detail below, is that the School District's procurement code specifically allowed it to agree to the small hourly rate increases that USAC, for some reason, has found objectionable. Therefore, the small rate changes could not possibly have formed the basis for a competitive bidding violation either.

1. The School District Does NOT Pay a Flat Fee in Advance for Basic Maintenance. Therefore, Before the School District Could Apply for Discounts for the Upcoming Funding Year on Basic Maintenance, it Had to Know Approximately How Many Hours of Maintenance it was Likely Going to Need During that Time Period.

USAC should not have made an issue out of the small increase in *estimated* hours in the School District's FY 2009 and FY 2010 Item 21 Forms, let alone try to link them to a competitive bidding violation. That is because the "estimates of hours" were nothing more than that – estimates.

Please note that CSI does NOT charge the School District a flat fee, in advance, for basic maintenance. The parties' agreement has always been strictly pay-as-you-go. To illustrate how this process works, here is an excerpt from an email from the School District's representative to USAC explaining that the School District only pays for maintenance actually provided and, because this particular year's estimate turned out high, might have some funding to return:

From: Yohe, Paula A. [mailto:paula@dillon.k12.sc.us]
Sent: Friday, December 16, 2011 1:54 PM
To: Peterson, Clara
Subject: RE: Dillon County School Dist #4 Denial letter for FY2011 App #803379 FRN 2048363

...Since we were unsure of the specific amount of time needed when we had to file the Form 470 and the subsequent 471, we have seen a reduction in the amount of time needed for support. Since the vendor cannot bill for maintenance for anything that is not used, we anticipated that we would file a Form 500 to reduce the funding request, if needed. If we need to make that request at this time we can do so...

To ease the administrative burden on the School District and to ensure the School District's compliance with program rules, this is the process that the parties have put in place: CSI invoices the School District up front for the non-discounted portion (10%) of the total estimated cost of maintenance for the upcoming funding year; thereafter, after CSI provides service, CSI invoices USAC for the discounted amount and credits the School District's up front payment; at the end of the funding year, CSI performs a true-up.

What is especially important for USAC to realize is that CSI could have estimated any number of hours, even a million hours, and still it would not have made one whit of difference so

far as how much the School District would have ended up owing CSI for eligible maintenance. In reality, only two factors could possibly have affected the cost of maintenance: (1) the maintenance hours actually provided; and (2) the agreed upon hourly rates for maintenance. That is why USAC's decision to rely on *differences in estimated maintenance hours* from one year's Item 21 to the next as evidence of a "major" contract change, and thus a competitive bidding violation, is so baffling.

In short, the School District never agreed to pay CSI for a specific number of maintenance hours. CSI included an estimate of hours in its proposal because the School District needed an estimate for budgetary and E-rate application purposes, as well as to help it evaluate proposals. Since it did NOT have a flat fee maintenance contract, the only way the School District could apply for discounts on maintenance services was to include in its Item 21 Form a good faith estimate of how many hours of maintenance it was likely going to need, and then multiply that number by the hourly rates it had contractually agreed to pay. In this kind of maintenance arrangement, variations in the number of estimated hours that appear on E-rate Item 21 Forms over the course of a multiyear maintenance contract are NOT contract changes. Therefore, what is clear from all this is that USAC clearly made a mistake.

2. The School District's Procurement Code and the Parties' Contract Permitted the Small Hourly Rate Increases That USAC Concluded Incorrectly Was Evidence of a Competitive Bidding Violation.

Since the FY 2010 Letter of Appeal was filed, we have been able to secure an electronic copy of the School District's procurement regulations. Attached hereto as Exhibit 3 are the cover page and relevant sections of the School District's Procurement Code Policy.

We direct USAC's attention to Part C, Section 2-302 – Multi-year Contracts and, more specifically, to section (4)(b) thereunder. The rules acknowledge that price adjustments may be necessary over the long course of a multiyear contract, *and that the contract resulting from the solicitation may authorize them*. As discussed in the earlier Letter of Appeal, that is exactly what happened: the contract resulting from the solicitation authorized price adjustments to compensate CSI for increases in the cost of living. Therefore, in accordance with the terms of their contract,

the parties agreed to a price adjustment. In FY 2009, the average hourly rate for maintenance was 7.34% higher than it was in FY 2007, the first year of the contract. In contrast, the federal cost of living index increased 8.1% over that same period of time. *See* Letter of Appeal (Exhibit 1), pp.18-19.

CONCLUSION

For all of the above reasons, along with all of the reasons discussed in the parties' related Letter of Appeal, CSI and the School District respectfully request that USAC reverse its decision not to fund the School District's FY 2009 FRNs for basic maintenance and to restore full funding to all of the FRNs in issue.

Respectfully submitted *on behalf of*
Computer Software Innovations, Inc. and Dillon County School District Four,
/s/ Catherine Cruzan

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cc: Chris Davis
Federal Programs Compliance Manager
Computer Software Innovations, Inc.

Paula Yohe
Director of Technology and Information Services
Dillon County School District 4

November 21, 2012

Exhibit 1

via e-mail: appeals@sl.universalservice.org

Letter of Appeal
Schools and Libraries Division - Correspondence Unit
30 Lanidex Plaza West
PO Box 685
Parsippany, NJ 07054-0685

LETTER OF APPEAL
of
USAC FUNDING COMMITMENT DECISION LETTERS
Date of FCDLs: September 24, 2012

Appellants: **Computer Software Innovations, Inc.**
900 Main Street (Suite T)
Easley, SC 29640

SPIN: 143017811

and

Dillon County School District 4
(formerly Dillon County School District 2)
801 South Ninth Ave.
Dillon, SC 29536

Entity #: 127197
FCC Registration #: 0020674073

Letter of Appeal Contact: Catherine Cruzan
President
Funds For Learning, LLC
2575 Kelley Pointe Parkway
Suite 200
Edmond, OK 73013
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(405) – 341-4140

Appellants' Contact: Chris Davis
Federal Programs Compliance Manager
Computer Software Innovations, Inc.
cdavis@csioutfitters.com
864-770-2762

Appellants' Authorization: Funds For Learning, LLC (FFL) is authorized to prepare and file this appeal electronically on behalf of both appellants and to discuss any matter related to it. If USAC has questions or requires additional information, please contact Catherine Cruzan, the Letter of Appeal contact designated above.

Funding Year: 2010
Form 471 Application Number: 741606 and 737144
FRNs in Issue: see table below

FRN	Form 471	Svc	Year	FCDL Date	Discount %	Requested Amount	Rejected Amount
2005166	737144	Basic Maintenance	2010	09/24/2012	90%	\$11,168.93	\$11,168.93
2005193	737144	Basic Maintenance	2010	09/24/2012	90%	\$6,930.36	\$6,930.36
2005203	737144	Basic Maintenance	2010	09/24/2012	90%	\$8,573.36	\$8,573.36
2005218	737144	Basic Maintenance	2010	09/24/2012	90%	\$14,009.33	\$14,009.33
2005231	737144	Basic Maintenance	2010	09/24/2012	90%	\$7,753.10	\$7,753.10
2005252	737144	Basic Maintenance	2010	09/24/2012	90%	\$6,994.19	\$6,994.19
2005271	737144	Basic Maintenance	2010	09/24/2012	90%	\$8,484.48	\$8,484.48
2005569	741606	Basic Maintenance	2010	09/24/2012	90%	\$14,828.83	\$14,828.83
2005660	741606	Basic Maintenance	2010	09/24/2012	90%	\$16,073.32	\$16,073.32
						\$94,815.90	\$94,815.90

THE ISSUE

Dillon County School District Two (now known as Dillon County School District Four), (“School District”) has been submitting requests for E-rate discounts on its basic maintenance contracts with Computer Software Innovations, Inc. (“CSI”) every funding year since FY 2007, which is when its long-term contract with CSI began. USAC decided incorrectly not to fund the School District’s FY 2010 FRNs for basic maintenance on the grounds that the Item 21 Descriptions of Service for that funding year included some additional equipment and slightly higher prices than the Item 21 Descriptions of Services for FY 2007.

CSI and the School District contend, contrary to USAC, that the differences between the Item 21s for the two funding years – the addition of wireless networking equipment to one and slightly higher hours and rates in the other – could not possibly amount to a competitive bidding violation. According to USAC, when an applicant files an Item 21 for a multiyear maintenance contract, and that Item 21 includes higher prices or items that differ from what appeared in the first year’s Item 21, it indicates conclusively that the parties’ contract has changed. That, USAC says, automatically constitutes a competitive bidding violation -- regardless of the nature of the change or the circumstances. We disagree.

Precedent dating back more than 100 years stands for the very clear proposition that if the solicitation for a public contract either includes or contemplates the contract changes in issue or if the changes are anything less than “material” or “substantial,” the changes will NOT invalidate the contract. Here, the School District’s RFPs for comprehensive, long-term network maintenance contracts included in its terms and contemplated the very changes that USAC relied upon to invalidate the parties’ multiyear maintenance agreements.

Therefore, CSI and the School District together respectfully request that USAC review this matter, reverse its decisions, and restore all of the School District’s funding.

FACTS

School District Issues FY 2007 RFPs for Basic Maintenance

For the 2007 funding year, the School District issued an RFP for “Basic Maintenance and Configuration” and another one for “Basic Maintenance of Hardware.” Among other things, the RFPs specifically instructed bidders to include maintenance and/or warranty charges for anything new that the School District might want to add later:¹

Maintenance/Warranty for NEW items: Include maintenance and/or warranty charges as a line item on the bid for the new product or service. Do NOT list maintenance and/or warranty charges for new products & services as a separate bid.

More specifically, the solicitation placed potential bidders on notice that the School District intended to purchase wireless networking equipment during the term of the contract and contemplated the addition of that equipment to the parties’ maintenance schedule. In this regard, the RFP advised bidders:²

Wireless equipment and installation may be listed a total project as long as subtotals are provided by site.”

The School District also made it clear that it was interested in a long term relationship with the successful vendor, pointing out that it intended to enter into a contract that could last as long as five years.³ So far as prices were concerned over this long a time period, the RFP simply required that prices remained “consistent throughout the life of the contract.”⁴

CSI Submits Winning Proposals

CSI submitted proposals to handle all of the School District’s network maintenance requirements. CSI addressed everything the RFPs asked for, including rates and hours, costs for maintaining existing equipment and, with respect to new equipment, which the solicitation made

¹ Notice of Request for Proposal for Basic Maintenance and Configuration dated January 8, 2007 (“RFP”), Contract Requirements section, p. 13.

² RFP Contract Requirements section, p. 14.

³ RFP, para. 17.

⁴ RFP, para. 5.

clear the School District intended to add over the course of the contract, stated that it intended to take up this issue at the parties' very first planning meeting:⁵

During the initial planning meeting, the CSI engineering manager will also discuss with the district any planned or desired infrastructure upgrades in the form of new servers and LAN/WAN electronics. Timelines for these "new" implementations will be developed and included in the previously discussed "on-site/maintenance schedule". The appropriate CSI engineer will then be scheduled to implement these "upgrades" as appropriate.

To clarify the issue of price increases in a manner consistent with the RFP, CSI proposed and the School District agreed that price increases should be based on the cost of living index:⁶

Although the district's intent it to award this as a multiyear contract, pricing listed is good for one (1) year only and CSI reserves the right to increase rates and/or product pricing for any item listed based on the cost of living index in subsequent years.

School District Awards Maintenance Contracts to CSI

By the end of January 2007, the parties had two fully executed maintenance agreements that are now at the center of this appeal. The contracts left no doubt that prices and price increases, if any, would be governed by what CSI had proposed ("Prices are set per the aforementioned proposal"), and that the list of existing equipment that CSI would be required to maintain would be discussed and agreed upon ("After acceptance of this contract by both parties, Customer agrees to work with CSI on determining the products and services to be listed on the Item 21 attachments.").⁷

School District Applies for Discounts on Basic Maintenance

Beginning in FY 2007, the School District began applying for discounts on basic maintenance, basing its funding requests on the two contracts in issue, FY2007-001A and FY2007-002A. Two years later, before the funding year began and in accordance with the terms of the School District's original solicitations and the resulting contracts, the parties agreed to a minor increase in hours and labor rates (FY2007-002A) and to add the School District's new

⁵ CSI Proposal, p.26

⁶ CSI Proposal, p.26

⁷ CSI – School District Maintenance Contracts, para. 4.

wireless equipment to the hardware maintenance schedule (FY2007-001A). Consequently, in FY 2009 and FY 2010, the School District applied for discounts on basic maintenance that included coverage of the School District's new wireless networking equipment and minor price changes.

USAC Denies The School District's FY 2010 Funding Requests for Basic Maintenance

USAC denied the School District's FY 2010 requests for discounts on basic maintenance because of an alleged competitive bidding violation. To reach this conclusion, first, USAC noted two changes that it had found in the School District's FY 2010 Item 21 Descriptions of Service: (1) Cisco wireless networking equipment that did not appear in the contract's original Item 21; and (2) maintenance hours and hourly rates that were higher than what the School District had listed before. These changes, USAC found, changed their respective contracts, and an applicant may not make any contract changes, USAC went on to conclude (without citation or support), unless it rebids the contract first. Since the School District had not rebid either one, USAC decided that the School District had committed competitive bidding violations and, for that reason, refused to fund its requests.

With respect to the FRNs covered by contract FY2007-001A, USAC decided:

The FRN is denied due to a competitive bidding violation, since the scope of their original contracts changed after the submission of the FY 2010 FCC Form 471. Specifically, the numbers and costs of Cisco 4402-25 and Cisco 1131AG listed on their Item 21 attachments were not included in the Item 21 attachments provided by CSI being covered under the original contract DSD2-FY2007-001A. Program rules require that a new FCC Form 470 be posted to the USAC website for at least 28 days prior to renegotiating or changing the terms of the contract. Posting a new FCC Form 470 makes potential bidders aware of your desire to change the terms of your contract and allows all potential bidders the opportunity to participate in the 28-day competitive bidding process. Since you failed to post a Funding Year 2010 FCC Form 470 for these services, this FRN must be denied

With respect to the FRNs covered by contract FY2007-002A, USAC decided:

The FRN is denied due to a competitive bidding violation, since the scope of their original contracts changed after the submission of the FY 2010 FCC Form 471. Specifically, the number of hours and unit cost of maintenance and configuration changes on the DHCP/DNS/Operating System/Router&L3 devices/firmware on switches increased on their Item 21 attachments, which are different from the

Item 21 attachments provided by CSI being covered under the original contract DSD2-FY2007-002A. Program rules require that a new FCC Form 470 be posted to the USAC website for at least 28 days prior to renegotiating or changing the terms of the contract. Posting a new FCC Form 470 makes potential bidders aware of your desire to change the terms of your contract and allows all potential bidders the opportunity to participate in the 28-day competitive bidding process. Since you failed to post a Funding Year 2010 FCC Form 470 for these services, this FRN must be denied.

DISCUSSION

I. USAC’S CONTENTION THAT ANY CHANGES MADE TO AN ITEM 21 DESCRIPTION OF SERVICE AFTER THE FIRST YEAR OF A MULTIYEAR MAINTENANCE CONTRACT CONSTITUTES CONCLUSIVE PROOF OF A COMPETITIVE BIDDING VIOLATION IS INCORRECT.

- A. There is no FCC rule that says applicants must rebid their contracts every time they want to implement an agreed upon change or renegotiate one or more of its terms, regardless of the circumstances.**

With no legal support and despite very clear precedent to the contrary, USAC assumes that if an applicant fails to submit an *identical* Item 21 Description of Service every year over the course of a multiyear maintenance contract, that applicant has automatically committed a competitive bidding violation. That is not true.

USAC’s assumption is based on the mistaken belief that the first Item 21 that an applicant submits in connection with a multiyear maintenance contract is always going to include every single eligible service and product that the contract covers. There are many reasons why that may not be the case. An applicant may decide, for example, not to request discounts on a particular item because of some uncertainty about its full or partial eligibility, but in later years, especially if eligibility rules are changed or clarified, may decide to include it. Sometimes applicants leave things off of Item 21s (and other forms) simply by mistake. We suspect, however, that the most common reason why changes appear on Item 21s in later years of multiyear maintenance contracts is because, over time, circumstances change. Contracting professionals expect that. That is the reason why the School District’s Item 21 changed. And there is nothing automatically wrong with that.

To be fair and effective, long-term contracts absolutely must take into account that circumstances might change, especially where, as here, extremely sophisticated technology is involved. Moreover, as we know all too well, economic conditions can change on a dime. The people who prepare RFPs and those who bid on them understand and appreciate this, and that is precisely why solicitations and contracts will more often than not provide for or contemplate the possibility of change. That is exactly what happened here. To penalize the School District and CSI for engaging in a well accepted, industry standard, common sense procurement practice serves no good E-rate-related or any other purpose.

We understand why USAC would like there to be a black and white rule equating an Item 21 change with a competitive bidding violation -- a rule like that would be incredibly easy to administer. For USAC's school and library constituency, however, a rule like that would be devastating. Were the FCC ever to adopt such a rule, schools and libraries would be forced to increase their level of procurement activity dramatically. That would strain budgets that are already stretched way too thin and make contract administration a general nightmare. At the operational level, there likely would be delivery delays and service interruptions pending the results of "contract change" procurements. Those kinds of delays and interruptions would interfere with the ability of schools and libraries to cost effectively and efficiently install, update, manage and maintain their mission critical telecommunications networks. Fortunately, that is not the FCC rule.

B. E-rate Program rules require rebidding only when applicants intend to make "major" contract changes not included in or contemplated by the original solicitation.

1. The "Major" Change Rule is Consistent With What USAC Stated Recently in a Different but Very Similar Context.

In its November 16, 2012 *Schools and Libraries News Brief*, USAC discussed whether applicants must file new Form 470s if they make changes to

their technology plans.⁸ First, USAC distinguished between “minor and “major” changes and then explained that a new Form 470 would have to be filed only if the change was “major.” Even if USAC did not say so verbatim, it follows logically that this distinction applies to contracts too – i.e., “major” contract changes require new Form 470s and “minor” changes do not.

“Major” changes, USAC explained, fall “outside the scope of the...related FCC Form 470” because they involve “new or expanded products and/or services” that the original Form 470 never contemplated. Those kinds of changes, USAC said, are “significant enough to require a new competitive bidding process.”

2. The “Major” Change Rule is Consistent With the Courts’ Well Established “Material” or “Substantial” Change Rule.

For over 100 years, courts have ruled that public agencies like schools and libraries cannot award contracts that include “substantial” or “material” provisions that the request for bids or proposals neither included nor contemplated.⁹ Similarly, variances between the contract as advertised and the contract as entered into must be “substantial” or “material” before those changes can make the contract void.¹⁰

⁸ <http://www.usac.org/sl/tools/news-briefs/preview.aspx?id=456> “What effects could minor or major changes to my technology plan have on the FCC Form 470 I already filed? Minor revisions or updates are those that remain within the scope of the original version of the technology plan and any related FCC Forms 470. Program rules do not require minor revisions or updates to be re-approved, but you should check with your TPA to see if he or she has other requirements.

Major revisions or updates are those outside of the scope of the original version of the technology plan and/or the FCC Form 470. A major revision would require the issuance of a new FCC Form 470 because the provision of the new or expanded products and/or services is significant enough to require a new competitive bidding process.”

⁹ See, e.g., *Warren v. Chandos* (1896) 115 Cal. 382 (1896); *Diamond v. Mankato*, 93 N.W. 911 (1903); 64 *Am.Jur.2d Public Works and Contracts* Sec. 66 (1972) (1990) (Public authorities cannot enter into a contract with the lowest bidder containing substantial provisions beneficial to him, not included in or contemplated in the terms and specifications upon which bids were invited.)(Any other course would prevent real competition, lead to favoritism and fraud, and defeat the purpose of the law in requiring contracts to be let upon bids made upon advertised specifications.)

¹⁰ *Ibid.*

II. WHAT USAC SHOULD HAVE BEEN ASKING IS WHETHER, AS A RESULT OF CHANGES MADE TO THE PARTIES' MULTIYEAR MAINTENANCE CONTRACTS, THOSE CONTRACTS ACTUALLY DIFFERED IN ANY MAJOR, MATERIAL, OR SUBSTANTIAL RESPECT FROM WHAT THE SCHOOL DISTRICT'S RFPs INCLUDED AND/OR CONTEMPLATED.

It is evident that USAC applied the wrong rule and, therefore, investigated the wrong issue. The question is not whether the School District's FY 2010 Item 21s included items that its FY 2007 Item 21s did not, but rather: whether the changes in the School District's maintenance contracts, which the School District memorialized in its FY 2009 and FY 2010 Item 21s, differed in any major (substantial or material) respect from what the School District's FY 2007 RFPs for maintenance contracts either included or contemplated. The answer to that question, we submit, is "no," and below we explain why.

III. THE FY 2007 RFPs FOR LONG-TERM MAINTENANCE CONTRACTS INCLUDED AND CONTEMPLATED EXACTLY THE KINDS OF CHANGES THAT THE PARTIES LATER MADE TO THEM; WHETHER THOSE CHANGES WERE "MAJOR" IS THEREFORE MOOT.

A contract change, as we have already discussed, requires a new bid *only if* the change materially alters the scope of the original solicitation. To do that, the change must be so different from what the solicitation requested that those who bid (and did not bid) would be prejudiced by the change. In this case, the School District's solicitation included and contemplated *all* of the later contract changes that USAC cited in its decision -- slight increases in labor rates and hours for eligible software maintenance and the addition of some wireless networking equipment to the School District's hardware maintenance schedule. Whether the contract changes made during the course of this multiyear contract were major, substantial, or material is therefore irrelevant. This means that USAC does not have to examine and decide this difficult issue, which is good because there is a substantial question as to whether USAC even has the authority to make those kinds of legal decisions.

- A. The service provider community knew that it was bidding on a long-term maintenance contract, and it is common knowledge in that community that the equipment covered by those kinds of contracts rarely if ever remain static, and that those kinds of contracts, to be fair, typically provide for some kind of price increases.**

It is common knowledge that maintenance providers who bid on long-term contracts fully expect the quantity and type of equipment to change over the course of the contract's multiyear term. With technology changing so rapidly and equipment in need of repair routinely being swapped out for new equipment, maintenance providers would never expect an applicant's network to look exactly the same in the later years of the contract as it did on day one. Moreover, they know it makes no sense for customers to bid out new maintenance contracts every time they buy something new. Nor would they expect the applicant to prohibit it completely from raising its rates over the entire term of the contract. That would be unreasonable and completely unrealistic.

The maintenance provider community was well aware that the School District was in the market for a long-term contract, because this is what the solicitation said:¹¹

Contracts will be renewed on a yearly basis. If the District determines that the selected vendor is providing acceptable levels of coverage, the contract will be renewed for a period of not more than 5 years.

- B. In its solicitation, the School District: (1) did inform potential bidders that new equipment requiring maintenance would be added; (2) did contemplate specifically that wireless equipment would be added; and (3) did contemplate the possibility of at least some small price increases over the course of the contract's potentially long, five-year term.**

1. Notice: Maintenance of New Equipment

The RFP specifically instructed bidders to include maintenance and/or warranty charges for anything new that the School District might want to add

¹¹ RFP, para. 17.

later:¹²

Maintenance/Warranty for NEW items: Include maintenance and/or warranty charges as a line item on the bid for the new product or service. Do NOT list maintenance and/or warranty charges for new products & services as a separate bid.

2. Notice: Wireless Networking Equipment to Be Added.

More specifically, the solicitation placed potential bidders on notice that the School District intended to purchase wireless networking equipment during the term of the contract and contemplated the addition of that equipment to the parties' maintenance schedule. The RFP said:

Wireless equipment and installation may be listed a total project as long as subtotals are provided by site.”¹³

This, combined with the RFP's specific request to bidders to cover the maintenance of new equipment in their proposals made it perfectly plain to potential bidders that the solicitation contemplated the future purchase of wireless networking equipment that the winning bidder would be required to maintain.

The following excerpt from CSI's proposal is further proof that the service provider community clearly understood what the School District's solicitation contemplated in terms of adding new networking equipment:¹⁴

During the initial planning meeting, the CSI engineering manager will also discuss with the district any planned or desired infrastructure upgrades in the form of new servers and LAN/WAN electronics. Timelines for these “new” implementations will be developed and included in the previously discussed “on-site/maintenance schedule”.

3. Notice: Reasonable Price Increases During the Term of the Contract Contemplated.

As discussed above, it is common knowledge in the industry that prices for

¹² RFP Contract Requirements section, p. 13.

¹³ RFP Contract Requirements section, p. 14.

¹⁴ CSI Proposal for Basic Maintenance and Configuration, p.26

maintaining technology cannot possibly remain completely flat during the entire term of a multiyear contract. So to contend, as USAC does here, that the School District's solicitation did not contemplate possibly having to pay the successful bidder slightly more in future years for maintenance than it agreed to initially or that potential bidders had no idea that that this might be the case is, quite frankly, outlandish.

On this particular subject, all the RFP said was that prices "must be consistent throughout the life of the contract."¹⁵ It did not say that they had to remain exactly the same for five long years. Accordingly, CSI and the School District agreed that prices would not change during the first year of the contract, but that CSI could "increase rates and/or product pricing for any item listed based on the cost of living index in subsequent years."¹⁶ This agreement ensured that price would remain "consistent throughout the life of the contract."

IV. ALL OF THE FY 2010 ITEM 21 CHANGES THAT USAC CITES AS EVIDENCE OF A COMPETITIVE BIDDING VIOLATION WERE CHANGES THAT THE SCHOOL DISTRICT'S FY 2007 SOLICITATION INCLUDED OR CONTEMPLATED AND, THEREFORE, DID NOT REQUIRE THE SCHOOL DISTRICT TO COMPLETELY REBID ITS FY 2007 MAINTENANCE CONTRACTS.

A. In accordance with the terms of the FY 2007 contract and as the FY 2007 solicitation contemplated, maintenance rates in FY 2007 and FY 2010 remained "Consistent."

1. Over Four Years, Maintenance Prices Increased Only Slightly.

USAC's assertion that "the number of hours and unit cost of maintenance and configuration changes on the DHCP/DNS/Operating System/Router&L3 devices/firmware on switches" increased on the School District's Item 21s between FY 2007 and FY 2010 is correct. Over this three year period:

- projected maintenance hours increased from 914 to 974 or 6.56%;

¹⁵ RFP, para. 5.

¹⁶ CSI Proposal for Basic Maintenance and Configuration, p.26

- the average hourly maintenance rate increased from \$109.16 to \$117.17 or 7.34%;
- maintenance costs based strictly on rates and hours increased from \$99,775 to 114,080 or 14.34%; and last but not least
- *total site maintenance costs* from FY 2007 to FY 2009 increased from \$109,150 to \$114,080 or 4.94%.

2. The Slight Increase in the Price of Maintenance between the First and Fourth Years of the Contract Was Consistent With the 8.1% COLA for Those Years.

For 2007, 2008, and 2009 the federal Cost of Living Adjustment (COLA) was 2.3%, 5.8%, and 0%, respectively.¹⁷ Thus the total COLA for the period 2007 through 2009 was 8.1%.

For close to the same period of time, total maintenance prices increased only 4.94%, hourly rates only 7.34%, and total rate/hour maintenance only slightly higher at 14.34%. Whether there is one “correct” way to measure the price increase for purposes of *this* contract is debatable, but what is clearly not debatable is that, on the whole, the increase in the price of maintenance was relatively small, extremely reasonable and, if not spot on with the COLA, certainly close enough to be considered “based on” it. There is no good reason in these circumstances not to defer to the parties’ interpretation of their own contract.

Those are all the facts that matter. There was nothing exceptional or surprising about the price increases that the parties agreed to for FY 2010. From the outset, everyone who was involved in preparing and bidding on this contract knew that, eventually, there was likely to be some minor price increase. There was nothing unfair or misleading about the solicitation.

What would be terribly unfair and unreasonable would be for USAC to unwind a perfectly good, reasonable and fair maintenance contract, for USAC to

¹⁷ <http://www.socialsecurity.gov/OACT/COLA/colaseries.html>

take away from the School District considerable sums of funding simply because the parties agreed to a very small price adjustment that surprised and offended no one, least of all maintenance providers.

B. In Accordance With the Terms of the FY 2007 Contract and as the FY 2007 Solicitation Contemplated, the School District Purchased Wireless Equipment and Added it to its Hardware Maintenance Contract.

USAC states, and it is correct, that “the numbers and costs of Cisco 4402-25 and Cisco 1131AG listed on [the School District’s FY 2010] Item 21 attachments were not included in the [FY 2007] Item 21 attachments.”

As discussed before in more detail, the original solicitation for basic maintenance services made it perfectly clear that, over the course of the contract, the School District intended to purchase new equipment, including wireless equipment, and that the successful bidder would be expected to maintain it. That is why CSI’s proposal made it a point to mention that the company’s engineering manager would meet with the School District staff right away to discuss the School District’s plans for infrastructure upgrades “in the form of new servers and LAN/WAN electronics” and the development of timelines for inclusion in the parties’ “on-site/maintenance schedule.”

What is clear, therefore, is that the inclusion of new wireless equipment in the parties’ maintenance schedule did not come as a surprise to anyone. They had been anticipating it from the outset, and everyone who saw the FY 2007 RFP knew or should have known that this was something that the School District fully intended to happen at some point over the course of a contract that was likely to last several years.

V. USAC HAS NO GROUNDS FOR INVALIDATING EITHER MAINTENANCE CONTRACT BECAUSE NEITHER THE ADDITION OF WIRELESS EQUIPMENT TO ONE NOR THE SLIGHT INCREASE IN PRICES IN THE OTHER CONSTITUTES A MAJOR CHANGE.

A contract change alone is insufficient to invalidate a public contract *unless*:

- (1) the solicitation neither included nor contemplated the change; *and*
- (2) the change was major, material, or substantial.

Therefore, *even if* the solicitations had not included or contemplated the changes, which they did, the changes still could not have invalidated their respective contracts. That is because adding wireless LAN equipment to a multiyear LAN maintenance contract is not a major, material, or substantial change -- and USAC has even agreed.¹⁸ And a slight price increase based on increases in the cost of living is certainly not one either.

VI. INVALIDATING THE PARTIES' MULTIYEAR CONTRACT AND REFUSING TO PROVIDE ANY E-RATE SUPPORT TO THE SCHOOL DISTRICT FOR ELIGIBLE MAINTENANCE IS A PUNISHMENT NOT A REMEDY.

The School District and CSI did their absolute best to comply with every single one of the E-rate Program's many and frequently complex and confusing rules. They cost allocated carefully and even reduced pre-discount costs to account for ineligible pre-K students, something many applicants and their service providers, as USAC knows, frequently do not do.

Even if what happened here did violate a program rule, it was purely inadvertent and technical in nature and prejudiced no one. While we do not agree that CSI's small, overall price increase, which is justifiable in terms of the solicitation, the contract and the COLA for the time period, violated any program rule, let's assume for argument's sake that it did. Also for argument's sake, let's assume that the School District's new wireless equipment should not have been added to the maintenance schedule because, somehow, potential bidders did not realize that the School District intended to purchase any more networking equipment over the next five years

¹⁸ The School District does everything it reasonably can to stay abreast of and follow program rules. Indeed, a School District representative actually contacted the SLD with questions about this exact issue. The SLD Help Desk representative informed the School District that adding wireless equipment to an existing BMIC contract was not a major change.

or, for some completely inexplicable reason, believed that the School District's plan was to bid out an overlapping maintenance contract every single time it decided to buy something new. That is all that USAC says happened. That is the sum and substance of USAC's case. Destroying the parties' contract, forcing the School District to engage in an expensive, time-consuming new procurement, and taking away close to \$100,000 in E-rate support for nothing more than that is not a remedy at all – it is a punishment.

If there actually was a rule violation associated with one or both of the changes, and USAC has no choice but to remedy one or both, the appropriate remedy would be: (1) not to pay discounts on what the School District pays to CSI to maintain its wireless equipment; and/or (2) pay discounts only on however much of the price increase USAC believes is appropriate under the rules.

CONCLUSION

For all of the above reasons, the CSI and the School District respectfully request that USAC reverse its decision not to fund the School District's FY 2010 FRNs for basic maintenance and to restore full funding to all of the FRNs in issue.

Respectfully submitted *on behalf of*
Computer Software Innovations, Inc. and Dillon County School District Four,
/s/ Catherine Cruzan

Catherine Cruzan
President
Funds For Learning, LLC
2575 Kelley Pointe Parkway
Suite 200
Edmond, OK 73013
ccruzan@fundsforlearning.com
404-431-4140

November 21, 2012

cc: Chris Davis
Federal Programs Compliance Manager
Computer Software Innovations, Inc.

Paula Yohe
Director of Technology and Information Services
Dillon County School District 4

Paula Yohe

DILLON COUNTY SCHOOL DIST 2

801 South Ninth Ave.

Dillon, SC 29536 2855

Exhibit 2

COMADs dated 10/10/12

Notification of Commitment Adjustment Letter

Funding Year 2009: July 1, 2009 - June 30, 2010

October 10, 2012

Paula Yohe
DILLON COUNTY SCHOOL DIST 2
801 South Ninth Ave.
Dillon, SC 29536 2855

Re: Form 471 Application Number:	685216
Funding Year:	2009
Applicant's Form Identifier:	BMOSY12
Billed Entity Number:	127197
FCC Registration Number:	0020674073
SPIN:	143017811
Service Provider Name:	Computer Software Innovations, Inc.
Service Provider Contact Person:	David Dechant

Our routine review of Schools and Libraries Program (Program) funding commitments has revealed certain applications where funds were committed in violation of Program rules.

In order to be sure that no funds are used in violation of Program rules, the Universal Service Administrative Company (USAC) must now adjust your overall funding commitment. The purpose of this letter is to make the required adjustments to your funding commitment, and to give you an opportunity to appeal this decision. USAC has determined the applicant is responsible for all or some of the violations. Therefore, the applicant is responsible to repay all or some of the funds disbursed in error (if any).

This is NOT a bill. If recovery of disbursed funds is required, the next step in the recovery process is for USAC to issue you a Demand Payment Letter. The balance of the debt will be due within 30 days of that letter. Failure to pay the debt within 30 days from the date of the Demand Payment Letter could result in interest, late payment fees, administrative charges and implementation of the "Red Light Rule." The FCC's Red Light Rule requires USAC to dismiss pending FCC Form 471 applications if the entity responsible for paying the outstanding debt has not paid the debt, or otherwise made satisfactory arrangements to pay the debt within 30 days of the notice provided by USAC. For more information on the Red Light Rule, please see "Red Light Frequently Asked Questions (FAQs)" posted on the FCC website at http://www.fcc.gov/debt_collection/faq.html.

TO APPEAL THIS DECISION:

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1. Include the name, address, telephone number, fax number, and email address (if available) for the person who can most readily discuss this appeal with us.
2. State outright that your letter is an appeal. Identify the date of the Notification of Commitment Adjustment Letter and the Funding Request Number(s) (FRN) you are appealing. Your letter of appeal must include the
 - Billed Entity Name,
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 - Billed Entity Number, and
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5. Provide an authorized signature on your letter of appeal.

To submit your appeal to us on paper, send your appeal to:

Letter of Appeal
Schools and Libraries Division - Correspondence Unit
100 S. Jefferson Rd.
P. O. Box 902
Whippany, NJ 07981

For more information on submitting an appeal to USAC, please see the "Appeals Procedure" posted on our website.

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FUNDING COMMITMENT ADJUSTMENT REPORT

On the pages following this letter, we have provided a Funding Commitment Adjustment Report (Report) for the Form 471 application cited above. The enclosed Report includes the Funding Request Number(s) from your application for which adjustments are necessary. See the "Guide to USAC Letter Reports" posted at <http://usac.org/sl/tools/reference/guide-usac-letter-reports.aspx> for more information on each of the fields in the Report. USAC is also sending this information to your service provider(s) for informational purposes. If USAC has determined the service provider is also responsible for any rule violation on the FRN(s), a separate letter will be sent to the service provider detailing the necessary service provider action.

Note that if the Funds Disbursed to Date amount is less than the Adjusted Funding Commitment amount, USAC will continue to process properly filed invoices up to the Adjusted Funding Commitment amount. Review the Funding Commitment Adjustment Explanation in the attached Report for an explanation of the reduction to the commitment(s). Please ensure that any invoices that you or your service provider(s) submits to USAC are consistent with Program rules as indicated in the Funding Commitment Adjustment Explanation. If the Funds Disbursed to Date amount exceeds your Adjusted Funding Commitment amount, USAC will have to recover some or all of the disbursed funds. The Report explains the exact amount (if any) the applicant is responsible for repaying.

Schools and Libraries Division
Universal Services Administrative Company

cc: David Dechant
Computer Software Innovations, Inc.

Funding Commitment Adjustment Report for
Form 471 Application Number: 685216

Funding Request Number:	1873943
Services Ordered:	INTERNAL CONNECTIONS MNT
SPIN:	143017811
Service Provider Name:	Computer Software Innovations, Inc.
Contract Number:	DSD2-FY2007-002A
Billing Account Number:	N/A
Site Identifier:	127197
Original Funding Commitment:	\$14,772.46
Commitment Adjustment Amount:	\$14,772.46
Adjusted Funding Commitment:	\$0.00
Funds Disbursed to Date	\$0.00
Funds to be Recovered from Applicant:	\$0.00
Funding Commitment Adjustment Explanation:	

After a thorough review, it has been determined that this funding commitment must be rescinded in full. During a review, it was determined that your FCC Form 470 did not include the service(s) for which you sought funding in your FCC Form 471 application, which is a violation of the FCCs competitive bidding rules. The scope of the original contract changed after the submission of the FY 2009 FCC Form 471. Specifically, the number of hours and unit cost of maintenance and configuration changes on the DHCP/DNS/Operating System/Router&L3 devices/firmware on switches increased on their Item 21 attachments, which are different from the Item 21 attachments provided by CSI being covered under the original contract DSD2-FY2007-002A. FCC rules require that, except under limited circumstances, all eligible schools and libraries shall seek competitive bids for all services eligible for support. Since the services for which you sought funding were not properly posted to the website for competitive bidding, the commitment has been rescinded in full and USAC will seek recovery of any improperly disbursed funds from the applicant. In addition, FCC rules require that a new FCC Form 470 be posted to the USAC website for at least 28 days prior to renegotiating or changing the terms of the contract. Posting a new FCC Form 470 makes potential bidders aware of your desire to change the terms of your contract and allows all potential bidders the opportunity to participate in the 28-day competitive bidding process.

Funding Request Number: 1874187
Services Ordered: INTERNAL CONNECTIONS MNT
SPIN: 143017811
Service Provider Name: Computer Software Innovations, Inc.
Contract Number: DSD2-FY2007-002A
Billing Account Number: N/A
Site Identifier: 127197
Original Funding Commitment: \$15,979.25
Commitment Adjustment Amount: \$15,979.25
Adjusted Funding Commitment: \$0.00
Funds Disbursed to Date \$0.00
Funds to be Recovered from Applicant: \$0.00
Funding Commitment Adjustment Explanation:

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Notification of Commitment Adjustment Letter

Funding Year 2009: July 1, 2009 - June 30, 2010

October 10, 2012

Paula Yohe
DILLON COUNTY SCHOOL DIST 2
801 South Ninth Ave
Dillon, SC 29536 2855

Re: Form 471 Application Number:	685379
Funding Year:	2009
Applicant's Form Identifier:	BMHY12
Billed Entity Number:	127197
FCC Registration Number:	0020674073
SPIN:	143017811
Service Provider Name:	Computer Software Innovations, Inc.
Service Provider Contact Person:	David Dechant

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Schools and Libraries Division
Universal Services Administrative Company

cc: David Dechant
Computer Software Innovations, Inc.

Funding Commitment Adjustment Report for
Form 471 Application Number: 685379

Funding Request Number: 1874979
Services Ordered: INTERNAL CONNECTIONS MNT
SPIN: 143017811
Service Provider Name: Computer Software Innovations, Inc.
Contract Number: DSD2-FY2007-001A
Billing Account Number: N/A
Site Identifier: 127197
Original Funding Commitment: \$8,519.36
Commitment Adjustment Amount: \$8,519.36
Adjusted Funding Commitment: \$0.00
Funds Disbursed to Date \$0.00
Funds to be Recovered from Applicant: \$0.00
Funding Commitment Adjustment Explanation:

After a thorough review, it has been determined that this funding commitment must be rescinded in full. During a review, it was determined that your FCC Form 470 did not include the service(s) for which you sought funding in your FCC Form 471 application, which is a violation of the FCCs competitive bidding rules. The scope of the original contract changed after the submission of the FY 2009 FCC Form 471. Specifically the numbers and costs of Cisco 4402-25 and Cisco 1131AG listed on your Item 21 attachments were not included in the Item 21 attachments provided by CSI being covered under the original contract# DSD2-FY2007-001A. FCC rules require that, except under limited circumstances, all eligible schools and libraries shall seek competitive bids for all services eligible for support. Since the services for which you sought funding were not properly posted to the website for competitive bidding, the commitment has been rescinded in full and USAC will seek recovery of any improperly disbursed funds from the applicant. In addition, FCC rules require that a new FCC Form 470 be posted to the USAC website for at least 28 days prior to renegotiating or changing the terms of the contract. Posting a new FCC Form 470 makes potential bidders aware of your desire to change the terms of your contract and allows all potential bidders the opportunity to participate in the 28-day competitive bidding process.

Funding Request Number: 1874921
Services Ordered: INTERNAL CONNECTIONS MNT
SPIN: 143017811
Service Provider Name: Computer Software Innovations, Inc.
Contract Number: DSD2-FY2007-001A
Billing Account Number: N/A
Site Identifier: 127197
Original Funding Commitment: \$11,158.13
Commitment Adjustment Amount: \$11,158.13
Adjusted Funding Commitment: \$0.00
Funds Disbursed to Date \$0.00
Funds to be Recovered from Applicant: \$0.00
Funding Commitment Adjustment Explanation:

After a thorough review, it has been determined that this funding commitment must be rescinded in full. During a review, it was determined that your FCC Form 470 did not include the service(s) for which you sought funding in your FCC Form 471 application, which is a violation of the FCC's competitive bidding rules. The scope of the original contract changed after the submission of the FY 2009 FCC Form 471. Specifically the numbers and costs of Cisco 4402-25 and Cisco 1131AG listed on your Item 21 attachments were not included in the Item 21 attachments provided by CSI being covered under the original contract# DSD2-FY2007-001A. FCC rules require that, except under limited circumstances, all eligible schools and libraries shall seek competitive bids for all services eligible for support. Since the services for which you sought funding were not properly posted to the website for competitive bidding, the commitment has been rescinded in full and USAC will seek recovery of any improperly disbursed funds from the applicant. In addition, FCC rules require that a new FCC Form 470 be posted to the USAC website for at least 28 days prior to renegotiating or changing the terms of the contract. Posting a new FCC Form 470 makes potential bidders aware of your desire to change the terms of your contract and allows all potential bidders the opportunity to participate in the 28-day competitive bidding process.

Funding Request Number: 1874950
Services Ordered: INTERNAL CONNECTIONS MNT
SPIN: 143017811
Service Provider Name: Computer Software Innovations, Inc.
Contract Number: DSD2-FY2007-001A
Billing Account Number: N/A
Site Identifier: 127197
Original Funding Commitment: \$6,910.92
Commitment Adjustment Amount: \$6,910.92
Adjusted Funding Commitment: \$0.00
Funds Disbursed to Date \$0.00
Funds to be Recovered from Applicant: \$0.00
Funding Commitment Adjustment Explanation:

After a thorough review, it has been determined that this funding commitment must be rescinded in full. During a review, it was determined that your FCC Form 470 did not include the service(s) for which you sought funding in your FCC Form 471 application, which is a violation of the FCCs competitive bidding rules. The scope of the original contract changed after the submission of the FY 2009 FCC Form 471. Specifically the numbers and costs of Cisco 4402-25 and Cisco 1131AG listed on your Item 21 attachments were not included in the Item 21 attachments provided by CSI being covered under the original contract# DSD2-FY2007-001A. FCC rules require that, except under limited circumstances, all eligible schools and libraries shall seek competitive bids for all services eligible for support. Since the services for which you sought funding were not properly posted to the website for competitive bidding, the commitment has been rescinded in full and USAC will seek recovery of any improperly disbursed funds from the applicant. In addition, FCC rules require that a new FCC Form 470 be posted to the USAC website for at least 28 days prior to renegotiating or changing the terms of the contract. Posting a new FCC Form 470 makes potential bidders aware of your desire to change the terms of your contract and allows all potential bidders the opportunity to participate in the 28-day competitive bidding process.

Funding Request Number:	1875008
Services Ordered:	INTERNAL CONNECTIONS MNT
SPIN:	143017811
Service Provider Name:	Computer Software Innovations, Inc.
Contract Number:	DSD2-FY2007-001A
Billing Account Number:	N/A
Site Identifier:	127197
Original Funding Commitment:	\$13,933.73
Commitment Adjustment Amount:	\$13,933.73
Adjusted Funding Commitment:	\$0.00
Funds Disbursed to Date	\$0.00
Funds to be Recovered from Applicant:	\$0.00
Funding Commitment Adjustment Explanation:	

After a thorough review, it has been determined that this funding commitment must be rescinded in full. During a review, it was determined that your FCC Form 470 did not include the service(s) for which you sought funding on your FCC Form 471 application, which is a violation of the FCC's competitive bidding rules. The scope of the original contract changed after the submission of the FY 2009 FCC Form 471. Specifically the numbers and costs of Cisco 4402-25 and Cisco 1131AG listed on your Item 21 attachments were not included in the Item 21 attachments provided by CSI being covered under the original contract# DSD2-FY2007-001A. FCC rules require that, except under limited circumstances, all eligible schools and libraries shall seek competitive bids for all services eligible for support. Since the services for which you sought funding were not properly posted to the website for competitive bidding, the commitment has been rescinded in full and USAC will seek recovery of any improperly disbursed funds from the applicant. In addition, FCC rules require that a new FCC Form 470 be posted to the USAC website for at least 28 days prior to renegotiating or changing the terms of the contract. Posting a new FCC Form 470 makes potential bidders aware of your desire to change the terms of your contract and allows all potential bidders the opportunity to participate in the 28-day competitive bidding process.

Funding Request Number:	1875051
Services Ordered:	INTERNAL CONNECTIONS MNT
SPIN:	143017811
Service Provider Name:	Computer Software Innovations, Inc.
Contract Number:	DSD2-FY2007-001A
Billing Account Number:	N/A
Site Identifier:	127197
Original Funding Commitment:	\$7,532.03
Commitment Adjustment Amount:	\$7,532.03
Adjusted Funding Commitment:	\$0.00
Funds Disbursed to Date	\$0.00
Funds to be Recovered from Applicant:	\$0.00
Funding Commitment Adjustment Explanation:	

After a thorough review, it has been determined that this funding commitment must be rescinded in full. During a review, it was determined that your FCC Form 470 did not include the service(s) for which you sought funding in your FCC Form 471 application, which is a violation of the FCC's competitive bidding rules. The scope of the original contract changed after the submission of the FY 2009 FCC Form 471. Specifically the numbers and costs of Cisco 4402-25 and Cisco 1131AG listed on your Item 21 attachments were not included in the Item 21 attachments provided by CSI being covered under the original contract# DSD2-FY2007-001A. FCC rules require that, except under limited circumstances, all eligible schools and libraries shall seek competitive bids for all services eligible for support. Since the services for which you sought funding were not properly posted to the website for competitive bidding, the commitment has been rescinded in full and USAC will seek recovery of any improperly disbursed funds from the applicant. In addition, FCC rules require that a new FCC Form 470 be posted to the USAC website for at least 28 days prior to renegotiating or changing the terms of the contract. Posting a new FCC Form 470 makes potential bidders aware of your desire to change the terms of your contract and allows all potential bidders the opportunity to participate in the 28-day competitive bidding process.

Funding Request Number:	1875078
Services Ordered:	INTERNAL CONNECTIONS MNT
SPIN:	143017811
Service Provider Name:	Computer Software Innovations, Inc.
Contract Number:	DSD2-FY2007-001A
Billing Account Number:	N/A
Site Identifier:	127197
Original Funding Commitment:	\$6,966.32
Commitment Adjustment Amount:	\$6,966.32
Adjusted Funding Commitment:	\$0.00
Funds Disbursed to Date	\$0.00
Funds to be Recovered from Applicant:	\$0.00
Funding Commitment Adjustment Explanation:	

After a thorough review, it has been determined that this funding commitment must be rescinded in full. During a review, it was determined that your FCC Form 470 did not include the service(s) for which you sought funding in your FCC Form 471 application, which is a violation of the FCCs competitive bidding rules. The scope of the original contract changed after the submission of the FY 2009 FCC Form 471. Specifically the numbers and costs of Cisco 4402-25 and Cisco 1131AG listed on your Item 21 attachments were not included in the Item 21 attachments provided by CSI being covered under the original contract# DSD2-FY2007-001A. FCC rules require that, except under limited circumstances, all eligible schools and libraries shall seek competitive bids for all services eligible for support. Since the services for which you sought funding were not properly posted to the website for competitive bidding, the commitment has been rescinded in full and USAC will seek recovery of any improperly disbursed funds from the applicant. In addition, FCC rules require that a new FCC Form 470 be posted to the USAC website for at least 28 days prior to renegotiating or changing the terms of the contract. Posting a new FCC Form 470 makes potential bidders aware of your desire to change the terms of your contract and allows all potential bidders the opportunity to participate in the 28-day competitive bidding process.

PURCHASING

Code **DJ-R** Issued **1/08**

DILLON SCHOOL DISTRICT FOUR PROCUREMENT CODE POLICY

Adopted 6/7/85; Revised 1/28/08

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order or contract modification, including adjustments to contracts awarded by competitive sealed bidding. The submission of such cost or pricing data relating to the pricing of a change order or contract modification is not required where:

- (a) unrelated and separately priced adjustments for which cost or pricing data would not be required are consolidated for administrative convenience; or
 - (b) it is determined in writing that such requirement may be waived and the determination states the reason for such waiver.
- (3) Certificate required: A contractor, actual or prospective, required to submit cost or pricing data in accordance with this section, must certify that, to the best of its knowledge and belief, the cost or pricing data submitted was accurate, complete and current as of a mutually specified date prior to the award of the contract or the pricing of the change order or contract modification.
- (4) Price adjustment provision required: Any contract awarded, change order or contract modification under which submission and certification of cost or pricing data are required must contain a provision stating the price to the school district, including profit or fee, must be adjusted to exclude any significant sums by which the school district finds that such price was increased because the contractor-furnished cost or pricing data was inaccurate, incomplete or not current as of the date agreed upon between the school district and the contractor.

Part C - Types of contracts

2-301 Types of contracts

Subject to the limitations of this section, any type of contract which will promote the best interest of the school district may be used; provided that the use of cost-reimbursement or a cost-plus-percentage-of-cost contract may not be used unless the school district makes a determination in writing approved by the board that such contract is likely to be less costly to the school district than any other type, or that it is impracticable to obtain the supplies, services or construction required except under such a contract.

2-302 Multi-year contracts

- (1) Specified period: A contract for supplies or services may be entered into for a period of time not to exceed five (5) years, provided the term of the contract and the conditions of renewal or extension, if any, are included in the solicitation, and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods must be subject to the availability of funds therefore.
- (2) Determination prior to use: Prior to the utilization of a multi-year contract, it must be determined in writing:
 - (a) that established requirements cover the period of the contract and are reasonably firm and continuing; and
 - (b) that such a contract will serve the best interests of the school district by encouraging effective competition or otherwise promoting savings in school district procurement.

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The following factors are among those relevant to such a determination:

- (a) vendors are not willing or able to compete because of high start-up costs or capital investment;
 - (b) lower production costs because of larger quantity or service requirements and substantial continuity of production or performance over a longer period of time can be expected to result in lower unit prices;
 - (c) stabilization of the contractor's workforce over a longer period of time may promote economy and consistent qualities; and
 - (d) the cost and burden of contract solicitation, award and administration of the procurement may be reduced.
- (3) Evaluation: Care should be taken when evaluating multi-year against prices for the first fiscal period that a determination on the basis of prices for the first period does not permit the successful bidder or offeror to "buy in" so as to give such bidder or offeror an undue competitive advantage in subsequent procurements.
- (4) Solicitation document: The solicitation document must state the following:
- (a) the estimated amount of supplies or services required for the proposed contract;
 - (b) that a unit price must be given for each supply or service, and that such unit prices shall be the same throughout the contract term (except to the extent price adjustments are authorized in the solicitation or the resulting contract);
 - (c) that the multi-year contract will be terminated if funds are not appropriated or otherwise made available to support continuation of performance in any fiscal period succeeding the first fiscal year; provided, however, this does not affect either the school district's rights or the contractor's rights under any other termination clause in the contract;
 - (d) that the school district must notify the contractor on a timely basis that the funds are not available for the continuation of the contract for a subsequent fiscal year;
 - (e) whether vendors may submit prices for the first fiscal period only, the entire time of performance only, or both the first fiscal period and the entire time of performance; and
 - (f) that a multi-year contract may be awarded and how such an award will be determined, including, if prices for the first fiscal period and the entire time of performance are submitted, how such prices will be compared.
- (5) Termination due to unavailability of funds in succeeding fiscal period: All multi-year contracts must contain a clause stating that when funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be terminated.

March 12, 2012

Paula Yohe

DILLON COUNTY SCHOOL DIST 2

(843) 841-3604

Application Number(s): 569320, 685216, 685379, 737144, 741606

Funding Request Number(s): 1571193, 1571234, 1571253, 1571282, 1592201, 1571300, 1874187, 1873943, 1875078, 1874921, 1875008, 1875051, 1874979, 1874950, 2005218, 2005271, 2005231, 2005166, 2005193, 2005203, 2005252, 2005569, 2005660

Response Due Date: March 19, 2012

We have completed our review of Funding Year (FY) 2007 FCC Form 471 #569320 FRNs 1571193, 1571234, 1571253, 1571282, 1592201, 1571300; FY 2009 FCC Form 471 #685216 FRNs 1874187, 1873943; and Form 471 #685379 FRNs 1875078, 1874921, 1875008, 1875051, 1874979, 1874950; FY 2010 FCC Form 471 #737144 FRNs 2005218, 2005271, 2005231, 2005166, 2005193, 2005203, 2005252; and Form 471 #741606, FRNs 2005660, 2005569; and determined that the contract renegotiation associated with these FRNs was in violation of the Program rules.

- Your original contract DSD2-FY2007-001A was signed January 12, 2007 for a period of three years. However, the scope of your original contract changed after the submission of the FY2009 FCC Form 471 #685379 and FY2010 FCC Form 471 #737144. Specifically the numbers and costs of Cisco 4402-25 and Cisco 1131AG listed on your Item 21 attachments were **not** included in the Item 21 attachments provided by CSI being covered under the original contract DSD2-FY2007-001A for FRNs 1875078, 1874921, 1875008, 1875051, 1874979, 1874950, 2005218, 2005271, 2005231, 2005166, 2005193, 2005203, and 2005252.

The District does not agree to these FRNs being denied

Prior to certifying the 471 application # 685379, the District contacted the Schools and Libraries help line to verify that the addition of these hardware items did not present a significant change to the contract or would cause the contract to be re-bid. Based upon that information, the items were added to the contract.

No intent was meant to break program rules. The District has removed these items from the funding request since during this review you are indicating they should not have been added. See attached spreadsheets

- Your original contract DSD2-FY2007-002A was signed January 12, 2007 for a period of three years. However, the scope of your original contract changed after the submission of the FY2009 FCC Form 471 #685216 and FY2010 FCC Form 471 #741606. Specifically, the number of hours and unit cost of maintenance and configuration changes on the DHCP/DNS/Operating System/Router&L3 devices/firmware on switches increased on your Item 21 attachments, which is different from the Item 21 attachments provided by CSI being covered under the original contract DSD2-FY2007-002A for FRNs 1874187, 1873943, 2005660, and 2005569.

The District does not agree to these FRNs being denied
The original contract included a clause on pricing exceptions. This clause was referred to in the original review of the application by PIA.
The district in agreement with the vendor will adjust the number of hours and pricing to the original costs of the contract.

No intent was meant to break program rules. The District has removed these items from the funding request since during this review you are indicating they should not have been added. See attached spreadsheets

- Your original contract DSD2-FY2007-003 was signed January 18, 2007 for a period of one year. However, the scope of your original contract changed after the submission of the FY2007 FCC Form 471 #569320. Specifically, the unit price of the CSI Installation includes site survey increased from \$100 or \$150 to \$175 on your Item 21 attachments, and the Cabling and mounting Installation cost listed on your Item 21 attachments were not included in the Item 21 attachments provided by CSI being covered under the original contract DSD2-FY2007-003 for FRNs 1571193, 1571234, 1571253, 1571282, 1592201, and 1571300.

Per your previous email to the vendor, the issues concerning contract DSD2-FY2007-003 for FY2007 App#569320 have been resolved satisfactorily.

- The rules of the Program require that a new FCC Form 470 be posted to the USAC website for at least 28 days prior to renegotiating or changing the terms of the contract. Posting a new FCC Form 470 makes potential bidders aware of your desire to change the terms of your contract and allows all potential bidders the opportunity to participate in the 28-day competitive bidding process.

As indicated above, no intent was meant to break program rules.

If the FRN(s) should not be denied and you have alternative information to support your position, please provide the supporting documentation. Please keep in mind that your supporting documentation should be the documentation or data used to prepare your FCC Form 471 application. Please note that such documentation must be dated on or before the close of the FCC Form 471 filing window in order for USAC to consider it. For additional contract guidance, please refer to the USAC website at: <http://www.usac.org/sl/applicants/step04/contract-guidance.aspx>.

Should you wish to cancel your FCC Form 471 application(s), or any of your individual funding requests, please clearly indicate in your response that it is your intention to cancel an application or funding request(s). Include in any cancellation request the FCC Form 471 application number(s) and/or funding request number(s), and the complete name, title and signature of the authorized individual.

Thank you for your cooperation and continued support of the Universal Service Program.

Clara Peterson
Program Compliance
USAC, Schools and Libraries Division
Ph: 973-581-5146

Fax: 973-599-6552

cpeters@sl.universalservice.org

Schools and Libraries Division - Correspondence Unit
30 Lanidex Plaza West, PO Box 685, Parsippany, NJ 07054-0685
Visit us online at: www.usac.org/sl

SPECIAL COMPLIANCE REVIEW CERTIFICATION

I certify that I am authorized to make the representations set forth in the responses to the Special Compliance Review inquiry on behalf of **DILLON COUNTY SCHOOL DISTRICT #2**, the entity represented on and responding to the Special Compliance Review inquiry, and am the most knowledgeable person with regard to the information set forth therein. I certify that the responses and supporting documentation to the Special Compliance Review inquiry are true and correct to the best of my knowledge, information and belief. I acknowledge that FCC rules provide that persons who have been convicted of criminal violations or held civilly liable for certain acts arising from their participation in the schools and libraries support mechanism are subject to suspension and debarment from the program. I acknowledge that false statements can be punished by fine or forfeiture under the Communications Act, 47 U.S.C. §§ 502, 503(b), or fine or imprisonment under Title 18 of the United States Code, 18 U.S.C. § 1001 and civil violations of the False Claims Act.

I declare under penalty of perjury that the foregoing is true and correct. Executed on 19__ day of __March_____, 2012 at __Dillon_____
____SC_____

Exhibit B



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal – Funding Year 2009-2010

July 01, 2013

Catherine Cruzan
Funds for Learning, LLC
2575 Kelley Pointe Parkway
Suite 200
Edmond, OK 73013

Re: Applicant Name: DILLON COUNTY SCHOOL DIST 2
Billed Entity Number: 127197
Form 471 Application Number: 685216
Funding Request Number(s): 1873943, 1874187
Your Correspondence Dated: December 08, 2012

After thorough review and investigation of all relevant facts, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of USAC's Funding Year 2009 Notification of Commitment Adjustment Letter for the Application Number indicated above. This letter explains the basis of USAC's decision. The date of this letter begins the 60 day time period for appealing this decision to the Federal Communications Commission (FCC). If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number(s): 1873943, 1874187

Decision on Appeal: **Denied**

Explanation:

- During a review, it was determined that your FCC Form 470 did not include the service(s) for which you sought funding in your FCC Form 471 application, which is a violation of the FCC's competitive bidding rules. The scope of the original contract changed after the submission of the FY 2009 FCC Form 471. FCC rules require that, except under limited circumstances, all eligible schools and libraries shall seek competitive bids for all services eligible for support. Since the services for which you sought funding were not properly posted to the website for competitive bidding, the commitment has been rescinded in full and USAC sought recovery of any improperly disbursed funds from the applicant. In addition, FCC rules require that a new FCC Form 470 be posted to the USAC website for at least 28 days prior to renegotiating or changing the terms of the

contract. Posting a new FCC Form 470 makes potential bidders aware of your desire to change the terms of your contract and allows all potential bidders the opportunity to participate in the 28-day competitive bidding process. After review of the documentation supplied on appeal, it was determined that you are changing the services after the contract has been negotiated and that if you wish to change the scope of the services, you should repost the Form 470 and rebid the contract. Therefore, your appeal is denied.

- FCC rules require that except under limited circumstances, an eligible school, library or consortium that includes an eligible school or library shall seek competitive bids for all services eligible for support. *See* 47 C.F.R. sec. 54.504(a). To help ensure that applicants receive the lowest pre-discount price from the vendors, applicants are required to carefully consider all bids received before entering into an agreement with a selected vendor and submitting an FCC Form 471. *See* 47 C.F.R. secs. 54.504(b)(2)(vii), (c)(1)(xi), and 54.511(a) and (b). Applicants are required to file a new FCC Form 470 in the current application period if they are applying for discounted services for which a new contract is sought. If an applicant has an existing multi-year contract they may be exempt from the competitive bid requirements set forth. *See* 47 C.F.R. secs. 54.511(c) and (d). However, if an applicant has a contract with voluntary extensions for which it has filed an FCC Form 470, it cannot extend or renew the contract beyond its original expiration date without posting a new FCC Form 470 and considering all bids received, unless voluntary extensions were indicated in Block 2, Item 13 of FCC Form 470 or in the RFP. *See* 47 C.F.R. secs. 54.511(c) and (d).

If your appeal has been approved, but funding has been reduced or denied, you may appeal these decisions to either USAC or the FCC. For appeals that have been denied in full, partially approved, dismissed, or canceled, you may file an appeal with the FCC. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received or postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD section of the USAC website or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company

cc: Paula Yobe



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal – Funding Year 2009-2010

July 01, 2013

Catherine Cruzan
Funds for Learning, LLC
2575 Kelley Pointe Parkway
Suite 200
Edmond, OK 73013

Re: Applicant Name: DILLON COUNTY SCHOOL DIST 2
Billed Entity Number: 127197
Form 471 Application Number: 685379
Funding Request Number(s): 1874921, 1874950, 1874979, 1875008, 1875051,
1875078
Your Correspondence Dated: December 08, 2012

After thorough review and investigation of all relevant facts, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of USAC's Funding Year 2009 Notification of Commitment Adjustment Letter for the Application Number indicated above. This letter explains the basis of USAC's decision. The date of this letter begins the 60 day time period for appealing this decision to the Federal Communications Commission (FCC). If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number(s): 1874921, 1874950, 1874979, 1875008, 1875051,
1875078

Decision on Appeal: **Denied**

Explanation:

- During a review, it was determined that your FCC Form 470 did not include the service(s) for which you sought funding in your FCC Form 471 application, which is a violation of the FCC's competitive bidding rules. The scope of the original contract changed after the submission of the FY 2009 FCC Form 471. FCC rules require that, except under limited circumstances, all eligible schools and libraries shall seek competitive bids for all services eligible for support. Since the services for which you sought funding were not properly posted to the website for competitive bidding, the commitment has been rescinded in full and USAC sought recovery of any improperly disbursed funds from the applicant. In

addition, FCC rules require that a new FCC Form 470 be posted to the USAC website for at least 28 days prior to renegotiating or changing the terms of the contract. Posting a new FCC Form 470 makes potential bidders aware of your desire to change the terms of your contract and allows all potential bidders the opportunity to participate in the 28-day competitive bidding process. After review of the documentation supplied on appeal, it was determined that you are changing the services after the contract has been negotiated and that if you wish to change the scope of the services, you should repost the Form 470 and rebid the contract. Therefore, your appeal is denied.

- FCC rules require that except under limited circumstances, an eligible school, library or consortium that includes an eligible school or library shall seek competitive bids for all services eligible for support. *See* 47 C.F.R. sec. 54.504(a). To help ensure that applicants receive the lowest pre-discount price from the vendors, applicants are required to carefully consider all bids received before entering into an agreement with a selected vendor and submitting an FCC Form 471. *See* 47 C.F.R. secs. 54.504(b)(2)(vii), (c)(1)(xi), and 54.511(a) and (b). Applicants are required to file a new FCC Form 470 in the current application period if they are applying for discounted services for which a new contract is sought. If an applicant has an existing multi-year contract they may be exempt from the competitive bid requirements set forth. *See* 47 C.F.R. secs. 54.511(c) and (d). However, if an applicant has a contract with voluntary extensions for which it has filed an FCC Form 470, it cannot extend or renew the contract beyond its original expiration date without posting a new FCC Form 470 and considering all bids received, unless voluntary extensions were indicated in Block 2, Item 13 of FCC Form 470 or in the RFP. *See* 47 C.F.R. secs. 54.511(c) and (d).

If your appeal has been approved, but funding has been reduced or denied, you may appeal these decisions to either USAC or the FCC. For appeals that have been denied in full, partially approved, dismissed, or canceled, you may file an appeal with the FCC. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received or postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD section of the USAC website or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company

cc: Paula Yohe

Exhibit C

Letter of Appeal -- Computer Software Innovations, Inc. and Dillon County School District 4

November 21, 2012

via e-mail: appeals@sl.universalservice.org

Letter of Appeal
Schools and Libraries Division - Correspondence Unit
30 Lanidex Plaza West
PO Box 685
Parsippany, NJ 07054-0685

LETTER OF APPEAL
of
USAC FUNDING COMMITMENT DECISION LETTERS
Date of FCDLs: September 24, 2012

Appellants: **Computer Software Innovations, Inc.**
900 Main Street (Suite T)
Easley, SC 29640

SPIN: 143017811

and

Dillon County School District 4
(formerly Dillon County School District 2)
801 South Ninth Ave.
Dillon, SC 29536

Entity #: 127197

FCC Registration #: 0020674073

Letter of Appeal Contact: Catherine Cruzan
President
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Appellants' Authorization: Funds For Learning, LLC (FFL) is authorized to prepare and file this appeal electronically on behalf of both appellants and to discuss any matter related to it. If USAC has questions or requires additional information, please contact Catherine Cruzan, the Letter of Appeal contact designated above.

Funding Year: 2010
Form 471 Application Number: 741606 and 737144
FRNs in Issue: see table below

FRN	Form 471	Svc	Year	FCDL Date	Discount %	Requested Amount	Rejected Amount
2005166	737144	Basic Maintenance	2010	09/24/2012	90%	\$11,168.93	\$11,168.93
2005193	737144	Basic Maintenance	2010	09/24/2012	90%	\$6,930.36	\$6,930.36
2005203	737144	Basic Maintenance	2010	09/24/2012	90%	\$8,573.36	\$8,573.36
2005218	737144	Basic Maintenance	2010	09/24/2012	90%	\$14,009.33	\$14,009.33
2005231	737144	Basic Maintenance	2010	09/24/2012	90%	\$7,753.10	\$7,753.10
2005252	737144	Basic Maintenance	2010	09/24/2012	90%	\$6,994.19	\$6,994.19
2005271	737144	Basic Maintenance	2010	09/24/2012	90%	\$8,484.48	\$8,484.48
2005569	741606	Basic Maintenance	2010	09/24/2012	90%	\$14,828.83	\$14,828.83
2005660	741606	Basic Maintenance	2010	09/24/2012	90%	\$16,073.32	\$16,073.32
						\$94,815.90	\$94,815.90

THE ISSUE

Dillon County School District Two (now known as Dillon County School District Four), (“School District”) has been submitting requests for E-rate discounts on its basic maintenance contracts with Computer Software Innovations, Inc. (“CSI”) every funding year since FY 2007, which is when its long-term contract with CSI began. USAC decided incorrectly not to fund the School District’s FY 2010 FRNs for basic maintenance on the grounds that the Item 21 Descriptions of Service for that funding year included some additional equipment and slightly higher prices than the Item 21 Descriptions of Services for FY 2007.

CSI and the School District contend, contrary to USAC, that the differences between the Item 21s for the two funding years – the addition of wireless networking equipment to one and slightly higher hours and rates in the other – could not possibly amount to a competitive bidding violation. According to USAC, when an applicant files an Item 21 for a multiyear maintenance contract, and that Item 21 includes higher prices or items that differ from what appeared in the first year’s Item 21, it indicates conclusively that the parties’ contract has changed. That, USAC says, automatically constitutes a competitive bidding violation -- regardless of the nature of the change or the circumstances. We disagree.

Precedent dating back more than 100 years stands for the very clear proposition that if the solicitation for a public contract either includes or contemplates the contract changes in issue or if the changes are anything less than “material” or “substantial,” the changes will NOT invalidate the contract. Here, the School District’s RFPs for comprehensive, long-term network maintenance contracts included in its terms and contemplated the very changes that USAC relied upon to invalidate the parties’ multiyear maintenance agreements.

Therefore, CSI and the School District together respectfully request that USAC review this matter, reverse its decisions, and restore all of the School District’s funding.

FACTS

School District Issues FY 2007 RFPs for Basic Maintenance

For the 2007 funding year, the School District issued an RFP for “Basic Maintenance and Configuration” and another one for “Basic Maintenance of Hardware.” Among other things, the RFPs specifically instructed bidders to include maintenance and/or warranty charges for anything new that the School District might want to add later:¹

Maintenance/Warranty for NEW items: Include maintenance and/or warranty charges as a line item on the bid for the new product or service. Do NOT list maintenance and/or warranty charges for new products & services as a separate bid.

More specifically, the solicitation placed potential bidders on notice that the School District intended to purchase wireless networking equipment during the term of the contract and contemplated the addition of that equipment to the parties’ maintenance schedule. In this regard, the RFP advised bidders:²

Wireless equipment and installation may be listed a total project as long as subtotals are provided by site.”

The School District also made it clear that it was interested in a long term relationship with the successful vendor, pointing out that it intended to enter into a contract that could last as long as five years.³ So far as prices were concerned over this long a time period, the RFP simply required that prices remained “consistent throughout the life of the contract.”⁴

CSI Submits Winning Proposals

CSI submitted proposals to handle all of the School District’s network maintenance requirements. CSI addressed everything the RFPs asked for, including rates and hours, costs for maintaining existing equipment and, with respect to new equipment, which the solicitation made

¹ Notice of Request for Proposal for Basic Maintenance and Configuration dated January 8, 2007 (“RFP”), Contract Requirements section, p. 13.

² RFP Contract Requirements section, p. 14.

³ RFP, para. 17.

⁴ RFP, para. 5.

clear the School District intended to add over the course of the contract, stated that it intended to take up this issue at the parties' very first planning meeting:⁵

During the initial planning meeting, the CSI engineering manager will also discuss with the district any planned or desired infrastructure upgrades in the form of new servers and LAN/WAN electronics. Timelines for these "new" implementations will be developed and included in the previously discussed "on-site/maintenance schedule". The appropriate CSI engineer will then be scheduled to implement these "upgrades" as appropriate.

To clarify the issue of price increases in a manner consistent with the RFP, CSI proposed and the School District agreed that price increases should be based on the cost of living index:⁶

Although the district's intent it to award this as a multiyear contract, pricing listed is good for one (1) year only and CSI reserves the right to increase rates and/or product pricing for any item listed based on the cost of living index in subsequent years.

School District Awards Maintenance Contracts to CSI

By the end of January 2007, the parties had two fully executed maintenance agreements that are now at the center of this appeal. The contracts left no doubt that prices and price increases, if any, would be governed by what CSI had proposed ("Prices are set per the aforementioned proposal"), and that the list of existing equipment that CSI would be required to maintain would be discussed and agreed upon ("After acceptance of this contract by both parties, Customer agrees to work with CSI on determining the products and services to be listed on the Item 21 attachments.").⁷

School District Applies for Discounts on Basic Maintenance

Beginning in FY 2007, the School District began applying for discounts on basic maintenance, basing its funding requests on the two contracts in issue, FY2007-001A and FY2007-002A. Two years later, before the funding year began and in accordance with the terms of the School District's original solicitations and the resulting contracts, the parties agreed to a minor increase in hours and labor rates (FY2007-002A) and to add the School District's new

⁵ CSI Proposal, p.26

⁶ CSI Proposal, p.26

⁷ CSI – School District Maintenance Contracts, para. 4.

wireless equipment to the hardware maintenance schedule (FY2007-001A). Consequently, in FY 2009 and FY 2010, the School District applied for discounts on basic maintenance that included coverage of the School District's new wireless networking equipment and minor price changes.

USAC Denies The School District's FY 2010 Funding Requests for Basic Maintenance

USAC denied the School District's FY 2010 requests for discounts on basic maintenance because of an alleged competitive bidding violation. To reach this conclusion, first, USAC noted two changes that it had found in the School District's FY 2010 Item 21 Descriptions of Service: (1) Cisco wireless networking equipment that did not appear in the contract's original Item 21; and (2) maintenance hours and hourly rates that were higher than what the School District had listed before. These changes, USAC found, changed their respective contracts, and an applicant may not make any contract changes, USAC went on to conclude (without citation or support), unless it rebids the contract first. Since the School District had not rebid either one, USAC decided that the School District had committed competitive bidding violations and, for that reason, refused to fund its requests.

With respect to the FRNs covered by contract FY2007-001A, USAC decided:

The FRN is denied due to a competitive bidding violation, since the scope of their original contracts changed after the submission of the FY 2010 FCC Form 471. Specifically, the numbers and costs of Cisco 4402-25 and Cisco 1131AG listed on their Item 21 attachments were not included in the Item 21 attachments provided by CSI being covered under the original contract DSD2-FY2007-001A. Program rules require that a new FCC Form 470 be posted to the USAC website for at least 28 days prior to renegotiating or changing the terms of the contract. Posting a new FCC Form 470 makes potential bidders aware of your desire to change the terms of your contract and allows all potential bidders the opportunity to participate in the 28-day competitive bidding process. Since you failed to post a Funding Year 2010 FCC Form 470 for these services, this FRN must be denied

With respect to the FRNs covered by contract FY2007-002A, USAC decided:

The FRN is denied due to a competitive bidding violation, since the scope of their original contracts changed after the submission of the FY 2010 FCC Form 471. Specifically, the number of hours and unit cost of maintenance and configuration changes on the DHCP/DNS/Operating System/Router&L3 devices/firmware on switches increased on their Item 21 attachments, which are different from the

Item 21 attachments provided by CSI being covered under the original contract DSD2-FY2007-002A. Program rules require that a new FCC Form 470 be posted to the USAC website for at least 28 days prior to renegotiating or changing the terms of the contract. Posting a new FCC Form 470 makes potential bidders aware of your desire to change the terms of your contract and allows all potential bidders the opportunity to participate in the 28-day competitive bidding process. Since you failed to post a Funding Year 2010 FCC Form 470 for these services, this FRN must be denied.

DISCUSSION

I. USAC’S CONTENTION THAT ANY CHANGES MADE TO AN ITEM 21 DESCRIPTION OF SERVICE AFTER THE FIRST YEAR OF A MULTIYEAR MAINTENANCE CONTRACT CONSTITUTES CONCLUSIVE PROOF OF A COMPETITIVE BIDDING VIOLATION IS INCORRECT.

- A. There is no FCC rule that says applicants must rebid their contracts every time they want to implement an agreed upon change or renegotiate one or more of its terms, regardless of the circumstances.**

With no legal support and despite very clear precedent to the contrary, USAC assumes that if an applicant fails to submit an *identical* Item 21 Description of Service every year over the course of a multiyear maintenance contract, that applicant has automatically committed a competitive bidding violation. That is not true.

USAC’s assumption is based on the mistaken belief that the first Item 21 that an applicant submits in connection with a multiyear maintenance contract is always going to include every single eligible service and product that the contract covers. There are many reasons why that may not be the case. An applicant may decide, for example, not to request discounts on a particular item because of some uncertainty about its full or partial eligibility, but in later years, especially if eligibility rules are changed or clarified, may decide to include it. Sometimes applicants leave things off of Item 21s (and other forms) simply by mistake. We suspect, however, that the most common reason why changes appear on Item 21s in later years of multiyear maintenance contracts is because, over time, circumstances change. Contracting professionals expect that. That is the reason why the School District’s Item 21 changed. And there is nothing automatically wrong with that.

To be fair and effective, long-term contracts absolutely must take into account that circumstances might change, especially where, as here, extremely sophisticated technology is involved. Moreover, as we know all too well, economic conditions can change on a dime. The people who prepare RFPs and those who bid on them understand and appreciate this, and that is precisely why solicitations and contracts will more often than not provide for or contemplate the possibility of change. That is exactly what happened here. To penalize the School District and CSI for engaging in a well accepted, industry standard, common sense procurement practice serves no good E-rate-related or any other purpose.

We understand why USAC would like there to be a black and white rule equating an Item 21 change with a competitive bidding violation -- a rule like that would be incredibly easy to administer. For USAC's school and library constituency, however, a rule like that would be devastating. Were the FCC ever to adopt such a rule, schools and libraries would be forced to increase their level of procurement activity dramatically. That would strain budgets that are already stretched way too thin and make contract administration a general nightmare. At the operational level, there likely would be delivery delays and service interruptions pending the results of "contract change" procurements. Those kinds of delays and interruptions would interfere with the ability of schools and libraries to cost effectively and efficiently install, update, manage and maintain their mission critical telecommunications networks. Fortunately, that is not the FCC rule.

B. E-rate Program rules require rebidding only when applicants intend to make "major" contract changes not included in or contemplated by the original solicitation.

1. The "Major" Change Rule is Consistent With What USAC Stated Recently in a Different but Very Similar Context.

In its November 16, 2012 *Schools and Libraries News Brief*, USAC discussed whether applicants must file new Form 470s if they make changes to

their technology plans.⁸ First, USAC distinguished between “minor and “major” changes and then explained that a new Form 470 would have to be filed only if the change was “major.” Even if USAC did not say so verbatim, it follows logically that this distinction applies to contracts too – i.e., “major” contract changes require new Form 470s and “minor” changes do not.

“Major” changes, USAC explained, fall “outside the scope of the...related FCC Form 470” because they involve “new or expanded products and/or services” that the original Form 470 never contemplated. Those kinds of changes, USAC said, are “significant enough to require a new competitive bidding process.”

2. The “Major” Change Rule is Consistent With the Courts’ Well Established “Material” or “Substantial” Change Rule.

For over 100 years, courts have ruled that public agencies like schools and libraries cannot award contracts that include “substantial” or “material” provisions that the request for bids or proposals neither included nor contemplated.⁹ Similarly, variances between the contract as advertised and the contract as entered into must be “substantial” or “material” before those changes can make the contract void.¹⁰

⁸ <http://www.usac.org/sl/tools/news-briefs/preview.aspx?id=456> “What effects could minor or major changes to my technology plan have on the FCC Form 470 I already filed? Minor revisions or updates are those that remain within the scope of the original version of the technology plan and any related FCC Forms 470. Program rules do not require minor revisions or updates to be re-approved, but you should check with your TPA to see if he or she has other requirements.

Major revisions or updates are those outside of the scope of the original version of the technology plan and/or the FCC Form 470. A major revision would require the issuance of a new FCC Form 470 because the provision of the new or expanded products and/or services is significant enough to require a new competitive bidding process.”

⁹ See, e.g., *Warren v. Chandos* (1896) 115 Cal. 382 (1896); *Diamond v. Mankato*, 93 N.W. 911 (1903); 64 *Am.Jur.2d Public Works and Contracts* Sec. 66 (1972) (1990) (Public authorities cannot enter into a contract with the lowest bidder containing substantial provisions beneficial to him, not included in or contemplated in the terms and specifications upon which bids were invited.)(Any other course would prevent real competition, lead to favoritism and fraud, and defeat the purpose of the law in requiring contracts to be let upon bids made upon advertised specifications.)

¹⁰ *Ibid.*

II. WHAT USAC SHOULD HAVE BEEN ASKING IS WHETHER, AS A RESULT OF CHANGES MADE TO THE PARTIES' MULTIYEAR MAINTENANCE CONTRACTS, THOSE CONTRACTS ACTUALLY DIFFERED IN ANY MAJOR, MATERIAL, OR SUBSTANTIAL RESPECT FROM WHAT THE SCHOOL DISTRICT'S RFPs INCLUDED AND/OR CONTEMPLATED.

It is evident that USAC applied the wrong rule and, therefore, investigated the wrong issue. The question is not whether the School District's FY 2010 Item 21s included items that its FY 2007 Item 21s did not, but rather: whether the changes in the School District's maintenance contracts, which the School District memorialized in its FY 2009 and FY 2010 Item 21s, differed in any major (substantial or material) respect from what the School District's FY 2007 RFPs for maintenance contracts either included or contemplated. The answer to that question, we submit, is "no," and below we explain why.

III. THE FY 2007 RFPs FOR LONG-TERM MAINTENANCE CONTRACTS INCLUDED AND CONTEMPLATED EXACTLY THE KINDS OF CHANGES THAT THE PARTIES LATER MADE TO THEM; WHETHER THOSE CHANGES WERE "MAJOR" IS THEREFORE MOOT.

A contract change, as we have already discussed, requires a new bid *only if* the change materially alters the scope of the original solicitation. To do that, the change must be so different from what the solicitation requested that those who bid (and did not bid) would be prejudiced by the change. In this case, the School District's solicitation included and contemplated *all* of the later contract changes that USAC cited in its decision -- slight increases in labor rates and hours for eligible software maintenance and the addition of some wireless networking equipment to the School District's hardware maintenance schedule. Whether the contract changes made during the course of this multiyear contract were major, substantial, or material is therefore irrelevant. This means that USAC does not have to examine and decide this difficult issue, which is good because there is a substantial question as to whether USAC even has the authority to make those kinds of legal decisions.

- A. The service provider community knew that it was bidding on a long-term maintenance contract, and it is common knowledge in that community that the equipment covered by those kinds of contracts rarely if ever remain static, and that those kinds of contracts, to be fair, typically provide for some kind of price increases.**

It is common knowledge that maintenance providers who bid on long-term contracts fully expect the quantity and type of equipment to change over the course of the contract's multiyear term. With technology changing so rapidly and equipment in need of repair routinely being swapped out for new equipment, maintenance providers would never expect an applicant's network to look exactly the same in the later years of the contract as it did on day one. Moreover, they know it makes no sense for customers to bid out new maintenance contracts every time they buy something new. Nor would they expect the applicant to prohibit it completely from raising its rates over the entire term of the contract. That would be unreasonable and completely unrealistic.

The maintenance provider community was well aware that the School District was in the market for a long-term contract, because this is what the solicitation said:¹¹

Contracts will be renewed on a yearly basis. If the District determines that the selected vendor is providing acceptable levels of coverage, the contract will be renewed for a period of not more than 5 years.

- B. In its solicitation, the School District: (1) did inform potential bidders that new equipment requiring maintenance would be added; (2) did contemplate specifically that wireless equipment would be added; and (3) did contemplate the possibility of at least some small price increases over the course of the contract's potentially long, five-year term.**

1. Notice: Maintenance of New Equipment

The RFP specifically instructed bidders to include maintenance and/or warranty charges for anything new that the School District might want to add

¹¹ RFP, para. 17.

later:¹²

Maintenance/Warranty for NEW items: Include maintenance and/or warranty charges as a line item on the bid for the new product or service. Do NOT list maintenance and/or warranty charges for new products & services as a separate bid.

2. Notice: Wireless Networking Equipment to Be Added.

More specifically, the solicitation placed potential bidders on notice that the School District intended to purchase wireless networking equipment during the term of the contract and contemplated the addition of that equipment to the parties' maintenance schedule. The RFP said:

Wireless equipment and installation may be listed a total project as long as subtotals are provided by site.”¹³

This, combined with the RFP's specific request to bidders to cover the maintenance of new equipment in their proposals made it perfectly plain to potential bidders that the solicitation contemplated the future purchase of wireless networking equipment that the winning bidder would be required to maintain.

The following excerpt from CSI's proposal is further proof that the service provider community clearly understood what the School District's solicitation contemplated in terms of adding new networking equipment:¹⁴

During the initial planning meeting, the CSI engineering manager will also discuss with the district any planned or desired infrastructure upgrades in the form of new servers and LAN/WAN electronics. Timelines for these “new” implementations will be developed and included in the previously discussed “on-site/maintenance schedule”.

3. Notice: Reasonable Price Increases During the Term of the Contract Contemplated.

As discussed above, it is common knowledge in the industry that prices for

¹² RFP Contract Requirements section, p. 13.

¹³ RFP Contract Requirements section, p. 14.

¹⁴ CSI Proposal for Basic Maintenance and Configuration, p.26

maintaining technology cannot possibly remain completely flat during the entire term of a multiyear contract. So to contend, as USAC does here, that the School District's solicitation did not contemplate possibly having to pay the successful bidder slightly more in future years for maintenance than it agreed to initially or that potential bidders had no idea that that this might be the case is, quite frankly, outlandish.

On this particular subject, all the RFP said was that prices "must be consistent throughout the life of the contract."¹⁵ It did not say that they had to remain exactly the same for five long years. Accordingly, CSI and the School District agreed that prices would not change during the first year of the contract, but that CSI could "increase rates and/or product pricing for any item listed based on the cost of living index in subsequent years."¹⁶ This agreement ensured that price would remain "consistent throughout the life of the contract."

IV. ALL OF THE FY 2010 ITEM 21 CHANGES THAT USAC CITES AS EVIDENCE OF A COMPETITIVE BIDDING VIOLATION WERE CHANGES THAT THE SCHOOL DISTRICT'S FY 2007 SOLICITATION INCLUDED OR CONTEMPLATED AND, THEREFORE, DID NOT REQUIRE THE SCHOOL DISTRICT TO COMPLETELY REBID ITS FY 2007 MAINTENANCE CONTRACTS.

A. In accordance with the terms of the FY 2007 contract and as the FY 2007 solicitation contemplated, maintenance rates in FY 2007 and FY 2010 remained "Consistent."

1. Over Four Years, Maintenance Prices Increased Only Slightly.

USAC's assertion that "the number of hours and unit cost of maintenance and configuration changes on the DHCP/DNS/Operating System/Router&L3 devices/firmware on switches" increased on the School District's Item 21s between FY 2007 and FY 2010 is correct. Over this three year period:

- projected maintenance hours increased from 914 to 974 or 6.56%;

¹⁵ RFP, para. 5.

¹⁶ CSI Proposal for Basic Maintenance and Configuration, p.26

- the average hourly maintenance rate increased from \$109.16 to \$117.17 or 7.34%;
- maintenance costs based strictly on rates and hours increased from \$99,775 to 114,080 or 14.34%; and last but not least
- *total site maintenance costs* from FY 2007 to FY 2009 increased from \$109,150 to \$114,080 or 4.94%.

2. The Slight Increase in the Price of Maintenance between the First and Fourth Years of the Contract Was Consistent With the 8.1% COLA for Those Years.

For 2007, 2008, and 2009 the federal Cost of Living Adjustment (COLA) was 2.3%, 5.8%, and 0%, respectively.¹⁷ Thus the total COLA for the period 2007 through 2009 was 8.1%.

For close to the same period of time, total maintenance prices increased only 4.94%, hourly rates only 7.34%, and total rate/hour maintenance only slightly higher at 14.34%. Whether there is one “correct” way to measure the price increase for purposes of *this* contract is debatable, but what is clearly not debatable is that, on the whole, the increase in the price of maintenance was relatively small, extremely reasonable and, if not spot on with the COLA, certainly close enough to be considered “based on” it. There is no good reason in these circumstances not to defer to the parties’ interpretation of their own contract.

Those are all the facts that matter. There was nothing exceptional or surprising about the price increases that the parties agreed to for FY 2010. From the outset, everyone who was involved in preparing and bidding on this contract knew that, eventually, there was likely to be some minor price increase. There was nothing unfair or misleading about the solicitation.

What would be terribly unfair and unreasonable would be for USAC to unwind a perfectly good, reasonable and fair maintenance contract, for USAC to

¹⁷ <http://www.socialsecurity.gov/OACT/COLA/colaseries.html>

take away from the School District considerable sums of funding simply because the parties agreed to a very small price adjustment that surprised and offended no one, least of all maintenance providers.

B. In Accordance With the Terms of the FY 2007 Contract and as the FY 2007 Solicitation Contemplated, the School District Purchased Wireless Equipment and Added it to its Hardware Maintenance Contract.

USAC states, and it is correct, that “the numbers and costs of Cisco 4402-25 and Cisco 1131AG listed on [the School District’s FY 2010] Item 21 attachments were not included in the [FY 2007] Item 21 attachments.”

As discussed before in more detail, the original solicitation for basic maintenance services made it perfectly clear that, over the course of the contract, the School District intended to purchase new equipment, including wireless equipment, and that the successful bidder would be expected to maintain it. That is why CSI’s proposal made it a point to mention that the company’s engineering manager would meet with the School District staff right away to discuss the School District’s plans for infrastructure upgrades “in the form of new servers and LAN/WAN electronics” and the development of timelines for inclusion in the parties’ “on-site/maintenance schedule.”

What is clear, therefore, is that the inclusion of new wireless equipment in the parties’ maintenance schedule did not come as a surprise to anyone. They had been anticipating it from the outset, and everyone who saw the FY 2007 RFP knew or should have known that this was something that the School District fully intended to happen at some point over the course of a contract that was likely to last several years.

V. USAC HAS NO GROUNDS FOR INVALIDATING EITHER MAINTENANCE CONTRACT BECAUSE NEITHER THE ADDITION OF WIRELESS EQUIPMENT TO ONE NOR THE SLIGHT INCREASE IN PRICES IN THE OTHER CONSTITUTES A MAJOR CHANGE.

A contract change alone is insufficient to invalidate a public contract *unless*:

- (1) the solicitation neither included nor contemplated the change; *and*
- (2) the change was major, material, or substantial.

Therefore, *even if* the solicitations had not included or contemplated the changes, which they did, the changes still could not have invalidated their respective contracts. That is because adding wireless LAN equipment to a multiyear LAN maintenance contract is not a major, material, or substantial change -- and USAC has even agreed.¹⁸ And a slight price increase based on increases in the cost of living is certainly not one either.

VI. INVALIDATING THE PARTIES' MULTIYEAR CONTRACT AND REFUSING TO PROVIDE ANY E-RATE SUPPORT TO THE SCHOOL DISTRICT FOR ELIGIBLE MAINTENANCE IS A PUNISHMENT NOT A REMEDY.

The School District and CSI did their absolute best to comply with every single one of the E-rate Program's many and frequently complex and confusing rules. They cost allocated carefully and even reduced pre-discount costs to account for ineligible pre-K students, something many applicants and their service providers, as USAC knows, frequently do not do.

Even if what happened here did violate a program rule, it was purely inadvertent and technical in nature and prejudiced no one. While we do not agree that CSI's small, overall price increase, which is justifiable in terms of the solicitation, the contract and the COLA for the time period, violated any program rule, let's assume for argument's sake that it did. Also for argument's sake, let's assume that the School District's new wireless equipment should not have been added to the maintenance schedule because, somehow, potential bidders did not realize that the School District intended to purchase any more networking equipment over the next five years

¹⁸ The School District does everything it reasonably can to stay abreast of and follow program rules. Indeed, a School District representative actually contacted the SLD with questions about this exact issue. The SLD Help Desk representative informed the School District that adding wireless equipment to an existing BMIC contract was not a major change.

or, for some completely inexplicable reason, believed that the School District's plan was to bid out an overlapping maintenance contract every single time it decided to buy something new. That is all that USAC says happened. That is the sum and substance of USAC's case. Destroying the parties' contract, forcing the School District to engage in an expensive, time-consuming new procurement, and taking away close to \$100,000 in E-rate support for nothing more than that is not a remedy at all – it is a punishment.

If there actually was a rule violation associated with one or both of the changes, and USAC has no choice but to remedy one or both, the appropriate remedy would be: (1) not to pay discounts on what the School District pays to CSI to maintain its wireless equipment; and/or (2) pay discounts only on however much of the price increase USAC believes is appropriate under the rules.

CONCLUSION

For all of the above reasons, the CSI and the School District respectfully request that USAC reverse its decision not to fund the School District's FY 2010 FRNs for basic maintenance and to restore full funding to all of the FRNs in issue.

Respectfully submitted *on behalf of*
Computer Software Innovations, Inc. and Dillon County School District Four,
/s/ Catherine Cruzan

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November 21, 2012

cc: Chris Davis
Federal Programs Compliance Manager
Computer Software Innovations, Inc.

Paula Yohe
Director of Technology and Information Services
Dillon County School District 4

Exhibit D



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal – Funding Year 2010-2011

July 01, 2013

Catherine Cruzan
Funds for Learning, LLC
2575 Kelley Pointe Parkway
Suite 200
Edmond, OK 73013

Re: Applicant Name: DILLON COUNTY SCHOOL DIST 2
Billed Entity Number: 127197
Form 471 Application Number: 737144
Funding Request Number(s): 2005166, 2005193, 2005203, 2005218, 2005231,
2005252, 2005271
Your Correspondence Dated: November 21, 2012

After thorough review and investigation of all relevant facts, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of USAC's Funding Year 2010 Funding Commitment Decision Letter for the Application Number indicated above. This letter explains the basis of USAC's decision. The date of this letter begins the 60 day time period for appealing this decision to the Federal Communications Commission (FCC). If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number(s): 2005166, 2005193, 2005203, 2005218, 2005231,
2005252, 2005271

Decision on Appeal: **Denied**

Explanation:

- FCC rules require that except under limited circumstances, an eligible school, library or consortium that includes an eligible school or library shall seek competitive bids for all services eligible for support. *See* 47 C.F.R. sec. 54.504(a). To help ensure that applicants receive the lowest pre-discount price from the vendors, applicants are required to carefully consider all bids received before entering into an agreement with a selected vendor and submitting an FCC Form 471. *See* 47 C.F.R. secs. 54.504(b)(2)(vii), (c)(1)(xi), and 54.511(a) and (b). Applicants are required to file a new FCC Form 470 in the current application period if they are applying for discounted services for which a new contract is

sought. If an applicant has an existing multi-year contract they may be exempt from the competitive bid requirements set forth. *See* 47 C.F.R. secs. 54.511(c) and (d). However, if an applicant has a contract with voluntary extensions for which it has filed an FCC Form 470, it cannot extend or renew the contract beyond its original expiration date without posting a new FCC Form 470 and considering all bids received, unless voluntary extensions were indicated in Block 2 of the FCC Form 470 or in the RFP. *See* 47 C.F.R. secs. 54.511(c) and (d).

If your appeal has been approved, but funding has been reduced or denied, you may appeal these decisions to either USAC or the FCC. For appeals that have been denied in full, partially approved, dismissed, or canceled, you may file an appeal with the FCC. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received or postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD section of the USAC website or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company

cc: Paula Yohe



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal – Funding Year 2010-2011

July 01, 2013

Catherine Cruzan
Funds for Learning, LLC
2575 Kelley Pointe Parkway
Suite 200
Edmond, OK 73013

Re: Applicant Name: DILLON COUNTY SCHOOL DIST 2
Billed Entity Number: 127197
Form 471 Application Number: 741606
Funding Request Number(s): 2005569, 2005660
Your Correspondence Dated: November 21, 2012

After thorough review and investigation of all relevant facts, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of USAC's Funding Year 2010 Funding Commitment Decision Letter for the Application Number indicated above. This letter explains the basis of USAC's decision. The date of this letter begins the 60 day time period for appealing this decision to the Federal Communications Commission (FCC). If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number(s): 2005569, 2005660
Decision on Appeal: **Denied**
Explanation:

- During a review, it was determined that your FCC Form 470 did not include the service(s) for which you sought funding in your FCC Form 471 application, which is a violation of the FCC's competitive bidding rules. The scope of the original contract changed after the submission of the FY 2010 FCC Form 471. FCC rules require that, except under limited circumstances, all eligible schools and libraries shall seek competitive bids for all services eligible for support. Since the services for which you sought funding were not properly posted to the website for competitive bidding, the funding was denied. In addition, FCC rules require that a new FCC Form 470 be posted to the USAC website for at least 28 days prior to renegotiating or changing the terms of the contract. Posting a new FCC Form 470 makes potential bidders aware of your desire to change the terms of

your contract and allows all potential bidders the opportunity to participate in the 28-day competitive bidding process. After review of the documentation supplied on appeal, it was determined that you are changing the services after the contract has been negotiated and that if you wish to change the scope of the services, you should repost the Form 470 and rebid the contract. Therefore, your appeal is denied.

- FCC rules require that except under limited circumstances, an eligible school, library or consortium that includes an eligible school or library shall seek competitive bids for all services eligible for support. See 47 C.F.R. sec. 54.504(a). To help ensure that applicants receive the lowest pre-discount price from the vendors, applicants are required to carefully consider all bids received before entering into an agreement with a selected vendor and submitting an FCC Form 471. See 47 C.F.R. secs. 54.504(b)(2)(vii), (c)(1)(xi), and 54.511(a) and (b). Applicants are required to file a new FCC Form 470 in the current application period if they are applying for discounted services for which a new contract is sought. If an applicant has an existing multi-year contract they may be exempt from the competitive bid requirements set forth. See 47 C.F.R. secs. 54.511(c) and (d). However, if an applicant has a contract with voluntary extensions for which it has filed an FCC Form 470, it cannot extend or renew the contract beyond its original expiration date without posting a new FCC Form 470 and considering all bids received, unless voluntary extensions were indicated in Block 2 of the FCC Form 470 or in the RFP. See 47 C.F.R. secs. 54.511(c) and (d).

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We thank you for your continued support, patience and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company

cc: Paula Yohe